

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2007/0722  
BETWEEN:

**GEO W. BENNETT, BRYSON & CO LTD**

**Claimants**

And

**GEOTECH COMPANY LIMITED**

**Defendant/Ancillary Claimant**

And

**AKINDELE LOOBY**

**Ancillary Defendant**

**Appearances:**

Dr. Dorsett for the Claimant

Mrs. Eleanor Clarke- Solomon for the Defendant/Ancillary Claimant

Ms. Kamilah Roberts and Ms. Andrea Roberts for Ancillary Defendant

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2010: 10, March

2010: 12, October  
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**JUDGMENT**

1. **Harris, J.:** The Claimant is a Company incorporated under the laws of Antigua and Barbuda and a registered insurance agent under the Insurance Act, serving as agent for National General Insurance Corp, NV (formally Netherland Antilles General Insurance Corp NV).
2. The Defendant Is a Company incorporated in Antigua and doing business as civil engineers and contractors.

3. At all material times one Akindele Looby carried the title and exercised the office of Chief Executive Officer of the Defendant and was held out by the Defendant to be an officer or agent of the Defendant.
4. The Defendant Company, a civil engineering and construction company, was the successful bidder for a contract to perform certain road works relating to the Sir Vivian Richards Stadium and was directed by the Government of Antigua and Barbuda to commence the said work on or before 1<sup>st</sup> September 2005 and to complete the same on or before 31<sup>st</sup> October 2006.<sup>1</sup>
5. It was a condition of the contract for the road works that suitable insurance be obtained.<sup>2</sup>
6. A proposal of insurance dated 19<sup>th</sup> September 2005 was submitted by the Claimant to the Defendant.<sup>3</sup>
7. By letter dated 20<sup>th</sup> September 2005 the proposal of insurance was accepted by the Defendant.<sup>4</sup>
8. On 23<sup>rd</sup> September 2005 insurance coverage was effected by the Claimant and cover notes issued according for the period 1<sup>st</sup> September 2005 to 1<sup>st</sup> November 2006:

Policy#	Coverage	Sum Insured	Premium	Trial Bundle 2
OTH...20007	Performance Bond	\$2,800,000.00	\$14,000.00	Page 119
ELP...20017	Employers Liability	\$1,000,000.00	\$2,500.00	Page 120
WCL...20080	Workmen's Compensation	\$9,500,000.00	\$57,000.00	Page 122
CAR...20065	Contractors All Risk	\$28,581,925.00	\$214,364.00	Page 124
PLB...20097	Public Liability	\$4,000,000.00	\$3,500.00	Page 126

To fully effect the Performance Bond coverage the Defendant was required to provide collateral equivalent to 75% of the coverage.<sup>5</sup> The Defendant was unable so to do and

<sup>1</sup> See "Notice to Proceed" at Trial Bundle 2, Page 136.

<sup>2</sup> See "Notice to Award" at Trial Bundle 2, page 137.

<sup>3</sup> See Trial Bundle 2, pages 103-116.

<sup>4</sup> See Trial Bundle 1, page 43.

<sup>5</sup> See Trial Bundle 2, page 106.

accordingly Performance Bond coverage was not provided.<sup>6</sup> No claim is made by the Claimant with respect to the Performance Bond coverage, the coverage having been cancelled.

9. By letter dated 13<sup>th</sup> October 2005 (see Trial Bundle 2, pages 158 and 159) attorneys for Ms. Dorothy Gittens wrote to the Claimant advising that “Geotech Company Ltd is part of the estate to George Looby (deceased) and our client or the estate will not be held liable or bounded by any contracted entered into in the name of the Company whatever” on account that Mr. Akindele Looby, the Defendant’s CEO, had not obtained Ms. Gittens’ approval pursuant to a Court Order dated 5<sup>th</sup> June 2005.
10. In February 2006 the Claimant received word that the Defendant had ceased the highway works on or about 22<sup>nd</sup> December 2005. On 7<sup>th</sup> February 2006 the Claimant issued Endorsement Cover Notes advised that the insurance coverage had been cancelled with effect from 22<sup>nd</sup> December 2005.

Policy#	Coverage	Sum Insured	Refund	Trial Bundle 2
ELP...20017	Employers Liability	\$1,000,000.00	\$1,732.88	Page 173
WCL...20080	Workmen Compensation	\$9,500,000.00	\$39,509.00	Page 164
CAR...20065	Contractors All Risk	\$28,581,925.00	\$148,586.55	Page 160
PLB...20097	Public Liability	\$4,000,000.00	\$2,426.02	Page 169

11. A statement of account was presented by the Claimant to the Defendant demanding payment for \$85,108.96 for premiums due on a pro-rata basis. (see Trial Bundle 2, page 177).
12. On the 22<sup>nd</sup> of April 2005, the ancillary claimant/defendant instituted proceedings against the ancillary defendant/ Akindele Looby (the CEO at the material time) for the purpose of obtaining various orders, one of which was that the ancillary defendant had no authority to act whether as chief executive officer or otherwise on behalf of the Geotech, the ancillary claimant/defendant.

<sup>6</sup> See Trial Bundle 2, pages 138 and 139.

13. The Ancillary Defendant's (Akindele Looby) position is that he did have the authority to act as CEO<sup>7</sup> and that in any event there is no valid insurance contract between the Claimant and the Defendant/Ancillary Claimant (Geotech Company Ltd.). The Ancillary Defendant further argues that even if the court finds the existence of a legally enforceable insurance contract, he should not be held liable to indemnify the Defendant/Ancillary Claimant in respect of the Claimant's Claim.

14. Five main issues arise for determination:

1. Was the Ancillary Defendant, CEO of the Defendant, held out as an agent of Defendant with ostensible authority to enter into a contract of insurance with the Claimant?
2. If so, did the Ancillary Defendant, for and on behalf of the Defendant, enter into such a contract of insurance which binds the Defendant?
3. Is the Defendant estopped by section 21(d) of the Companies Act 1995 ("the Act") from asserting against the Claimant, as a person dealing with the Defendant, that the Ancillary Defendant, a person held out by the Defendant as an agent of the Defendant, had no authority to exercise the power and perform the duties that are customary in the business of the Defendant or usual for such an agent?
4. Is the Defendant estopped by section 21(e) of the Act from asserting against the Claimant, as a person dealing with the Defendant, that a document, namely, a letter dated 20<sup>th</sup> September 2005 accepting a proposal of insurance from the Claimant ("the acceptance letter"), issued by the Ancillary Defendant, an agent of the Defendant Company with usual authority to issue such a document, is not valid or genuine?
5. What regard, if any, should be had to the Court Order of 6<sup>th</sup> June 2006?

#### CLAIMANT'S CASE<sup>8</sup>

15. The Ancillary Defendant was the Defendant's CEO and as such was in a senior managerial position. Being in such a senior managerial position, it is submitted that the

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<sup>7</sup> This assertion has been superseded by the consent Summary Judgment of the 30<sup>th</sup> January 2006.

<sup>8</sup> This is a substantial reproduction of the claimants written submissions.

Defendant held him out as a person authorized to enter into contracts with third parties, such as the Claimant, for an on behalf of the Defendant. That is to say, the Ancillary Defendant had ostensible authority to enter into contracts for and on behalf of the Defendant.

16. It appears that on account of a Court Order that the Ancillary Defendant was not authorized to enter into new contracts on behalf of the Defendant without the express written consent of Dorothy Gittens. However, the claimant submits, the Court Order terminating the Ancillary Defendant's actual authority does not release the Defendant from liability in the instant case as the Claimant at the time when the contract was entered into had no notice of the limitation that had been placed on the Ancillary Defendant's authority. The legal position, submits the claimant, is stated as Article 121 in **Bowstead & Reynolds on Agency** at 10-030:

*"Where a principal, by words or conduct, represents or permits it to be represented that an agent is authorized to act on his behalf, he is bound by he acts of the agent, notwithstanding the termination of authority (unless perhaps by the death or insolvency of the principal), to the same extent as he would have been if the authority had not been terminated, with respect of any third party dealing with the agent on the faith of any such representation, without notice of the termination of his authority".*

17. The claimant submits further, that a contract of insurance is, apart from the doctrine of uberrima fides, an ordinary commercial contract and accordingly the elementary, fundamental and ordinary position that a proposal and an acceptance of that proposal make a contract is equally applicable to an insurance contract as it is to any other contract. It had been submitted in *Siu v Eastern Insurance Co Ltd*. [1994] 2 AC 199 at 209C that a "contract of insurance is a contract of a special kind". Speaking for their Lordship of the Privy Council, Lord Lloyd of Berwick at 209D stated that such a submission, "if it is correct, it would have very far reaching consequences". Simply put, the formation of a building contract of insurance materializes when an offer by one party has been accepted by another.

18. The Defendant asserts that the Ancillary Defendant had no authority to enter into insurance contract on behalf of the Defendant. It is contended by the claimant that 21(d) of the Act prohibits the Defendant Company from making such an assertion, in that the Defendant Company, by permitting the Ancillary Defendant to hold the office of CEO was held out by the Defendant Company to be an agent of the Defendant Company with powers and duties that are customary in the business of the Defendant Company and are usual for such an agent to hold.<sup>9</sup> The holding out by the Defendant Company brings it squarely within S. 21(d) of the Companies Act 1995 and it is estopped accordingly.

19. Section 21(d) of the Companies Act 1995 provides:

*21. A Company or guarantor of an obligation of the Company may not assert against a person dealing with the Company or with any person who has acquired rights from the Company*

*(d) that a person held out by a company as director, an officer or an agent of the Company had not been duly appointed or had no authority to exercise the powers and perform the duties that are customary in the business of the Company or usual for such a director, officer or agent.*

20. The Defendant asserts that the acceptance letter dated 20<sup>th</sup> September 2005 is not valid in that the Ancillary Defendant had not obtained the consent of Dorothy Gittens, a director of the Defendant Company. It is respectfully submitted that S.21(e) of the Act prohibits the Defendant Company from making such an assertion in that the Ancillary Defendant as CEO had the usual authority (albeit not the actual authority) to issue such a document.

21. Section 21(e) of the Companies Act 1995 provides:

22. A Company or a guarantor of an obligation of the Company may not assert a person dealing with the Company or with any person who has acquired rights from the Company

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<sup>9</sup> See Armagas Ltd. v. Mundogas S.A. [1986] AC 717 at 777A-C).

(e) that a document issued by any director, officer or agent of the Company with actual or **usual authority** [emphasis supplied] to issue the document is not valid or not genuine.

23. The essence of “usual authority” is captured in Article 29 of **Bowstead & Reynolds on Agency** at 3-024:

**Article 29**

*MANAGERIAL AGENTS: IMPLIED AUTHORITY WHERE EMPLOYED TO  
CONDUCT TRADE OFR BUSINESS OR ACT GENERALLY IN CERTAIN MATTERS  
(USUAL AUTHORITY)*

*An agent who is authorized to conduct a particular trade or business or generally to act for his principal in matters of a particular nature, or to do a particular class of acts, has implied authority to do whatever is incidental to the ordinary conduct of such trade or business, or of matters of that nature, or is within the scope of that class of acts, and whatever is necessary for the proper and effective performance of his duties: but not to do anything that is outside the ordinary scope of his employment and duties.*

24. The Defendant relies heavily on a Court Order of 6<sup>th</sup> June 2005 (see Trial Bundle 1, pages 34-36) which among other things provided that the Ancillary Defendant shall continue the daily activities of the Defendant and shall not enter into any new contracts whatsoever without obtaining the prior written approval of Ms. Gittens.

25. Neither the Defendant nor the Claimant were parties to the action that was the subject of the said Court Order. Indeed, by part (4) of the said order the Defendant was removed as a party to those proceedings. The order of 6<sup>th</sup> June 2005 was in the nature of a personal judgment in favour of Ms. Gittens. According to the rule in *Hollington v F Hewthorn & Co Ltd* [1943] KB 587, personal judgments are only binding on the parties, not on third parties; indeed, they are not even admissible in evidence against other people. Lord Goddard giving the judgment for the English Court of Appeal in *Hollington* at 506 stated:

*A judgment obtained by A and B ought not to be evidence against C, for in the words of the Chief Justice in the Duchess of Kingston’s Case, “it would be unjust to bind any person who could not be admitted to make a defense, or to examine*

*witness or to appeal from a judgment he might think erroneous: and therefore..... the judgment of the Court upon facts found, although evidence against the parties, and all claiming under them, are not, in general, to be used to the prejudice of strangers". **This is true, not only convictions, but also of judgment in civil actions. If given between the same parties they are conclusive, but not against anyone who was not a party [emphasis supplied].***

26. What regard, if any, should be had to the Court Order of 6<sup>th</sup> June 2006 asks the claimant?

The said Court Order is inadmissible on the authority of *Hollington v F Hewthorn & Co Ltd* [1943] KB 587 and as applied in *Calyon v Michailaidis* [2009] UKPC 34. Moreover, on the authority of **Halsbury's Laws of England**, Vol. 9(1) at [920], the said Court Order did not discharge the parties' respective obligations under the contract.

#### DEFENDANT/ANCILLARY CLAIMANT'S CASE.<sup>10</sup>

27. The defendant contends that in the present case it is without doubt that the Ancillary Defendant had no authority whatsoever to act on behalf of the Defendant/Ancillary Claimant. In particular, by Court Order dated 6<sup>th</sup> June 2005, he was restricted from entering into any contracts on behalf of the Defendant without first having obtained the written consent of Ms. Gittens. The Ancillary Defendant was aware of that fact and the evidence before the Court shows that at no time whatsoever did the Ancillary Defendant hold himself out as an agent for the Defendant Ancillary/Claimant. The Ancillary Defendant was an employee of the Defendant/Ancillary Claimant. Regarding the letter dated 20<sup>th</sup> September, 2005, the Ancillary Defendant stated in cross examination that "it was no acceptance of any policy of insurance but clear on the face of the letter that the process of obtaining insurance policies would begin.

28. It is further submitted that in the event that the Court finds that there existed a contract of insurance in the present case, that contract cannot be enforced unless the "alleged contract" was ratified by the Defendant/Ancillary Claimant. There is no evidence before the Court that the Defendant/Ancillary Claimant ratified any contract of insurance. Importantly there is no signed policy of insurance. As the Claimant stated the Ancillary Defendant does not sign insurance policies.

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<sup>10</sup> This is a substantial reproduction of the parties statement of case and written submissions.

Regarding the cover notes, it is clear that those were made **subject** to a policy being effected. That is evident from the face of all the cover notes. A policy was never effected and in the words of the Claimant “Akindele Looby does not sign insurance policies”.

On the Question of liability of an agent acting without authority, Chitty on Contracts states the following:

*“one who expressly or impliedly indicates that he has the authority is liable in contract for breach of warranty of authority to any person to whom the indication is given and who suffers damages by acting on the faith of it, if in fact he had no such authority: **Collen v Wright** (1857) 8 E & B . 647. This is a specific type of collateral contract..... The liability is absolute and not based on negligence. The rule is not confined to contract; it covers other transactions into which a third party enters on the faith of a representation that the person with whom he is doing business has the authority of some other person: **Firbank’s Executors v Humphreys** (1886) 18 QBD 54 and **British Russian Gazette Ltd. v Associated Newspapers Ltd.** (1933) 2KB 616. Provided that the authority does not in fact exist at the material time, it is immaterial that the agent originally had such authority..... (p62). The dangers recoverable...from the agent will be those which directly flow from the breach of warranty....”*

*Regarding indemnity, it has been defined as a contractual or **Equitable right** under which the entire loss is shifted from a tortfeasor who is only technically or passively at fault to another who is primarily or actively responsible: (Black’s Law Dictionary, p 769).*

29. The defendant states that the Claimant made mention of section 83 of the Companies Act of Antigua and Barbuda. That section is similar to section 116 of the Canada Business Corporation Act. Both sections state “An act of a director or officer is valid notwithstanding an irregularity in his election or appointment or a defect in his qualification. (A copy of the Canada Business Corporation Act is attached). According to Fraser & Stewart “Company Law of Canada”, the section is designed to avoid questions being raised as to the validity of transactions where there has been a slip in appointment

of a director and cannot be invoked to override the substantive provisions relating to such appointments”. This fact was borne out in the case of Morris v Kanssen and Others [1946] A.C. 459. In the House of the Lords, Lord Simmonds considered several questions, two of which were whether the section.....has any application to the case, and what amounts to discovery of a defect for the purpose of the section.....

30. In answering the questions, Lord Simmonds stated that “*the section can be invoked only where there is a defect afterwards discovered in the appointment or qualification of a director*”. Lord Simmonds went on to say “*the section does not say that the acts of a person acting as director shall be valid notwithstanding that it is afterwards discovered that he was not appointed a director*”. In that case, the question arose as to whether the section could be called in aid by the appellant in order to validate certain transactions, namely the allotment of shares. The House of Lords stated that the section could not be used to validate the transactions.
31. Lord Simmonds then went on to consider the following cases namely Tyne Mutual Steamship Insurance Association v Brown, Dawson v African Consolidated Land and Trade Co., British Asbestos Co. LD v Boyd, and Channel Collieries Trust LD v Dover, St. Margaret’s and Martin Mill Light and concluded that “*the section deals with slips or irregularities in appointment and not with a total absence of appointment and still less with a fraudulent usurpation of authority*” (at paragraph 472).
32. It is submitted by the defendant that section 83 of the Companies Act does not apply to the present case. As mentioned earlier, by Court Order of 6<sup>th</sup> June 2005, the Ancillary Defendant was restricted from entering into any contact whatsoever without first obtaining Ms. Gittens consent. A breach of that Order can in no way be viewed as a mere irregularity or defect in the Ancillary Defendant’s “alleged” appointment as director and as such cannot be used by the Claimant in order to validate any insurance policy.
33. The Ancillary Defendant was aware at all times that his “alleged” directorship was being challenged. Therefore he could not have held himself out as an agent for the Defendant/Ancillary Claimant. There was no contact of insurance between the Claimant

and the Defendant/Ancillary Claimant. In the event that the Court finds that there was a contract of insurance, it is submitted that based on the facts and the Law. The Defendant/Ancillary Claimant is entitled to be indemnified by the Ancillary Defendant. The Defendant/ Ancillary Claimant is entitled the reliefs sought in the Ancillary Claim.

#### THE ANCILLARY DEFENDANT'S CASE<sup>11</sup>

34. Akindele Looby is the Ancillary Defendant. His case, put shortly is that (i) he did not conclude a contract of insurance between the defendant company and the claimant insurance company; (ii) That he ought not to be made to indemnify the defendant<sup>12</sup> company because the defendant company benefited substantially from the Vivian Richards construction contract to a value of over one million dollars and from the related insurance coverage;
35. The Ancillary Defendant submits that even if the Court should find that the Ancillary Defendant entered into the Contract with the Claimant on behalf of the Defendant in breach of the Court order dated 6<sup>th</sup> June, 2005, it does not automatically follow that the Defendant has a right to be indemnified by the Ancillary Defendant. He contends that the injunction dated 6<sup>th</sup> June, 2005 and the consent summary judgment dated 30<sup>th</sup> January, 2006 do not give the Defendant an automatic right to be indemnified by the Ancillary Defendant in respect of Liability arising from contracts entered into by the Ancillary Defendant on behalf of the Defendant.
36. In deciding on the question of whether or not an indemnity should be granted the Ancillary Defendant submits that the Court must consider the particular circumstances of the case and the applicable legal and equitable principles.
37. The Ancillary Defendant submits the proposition referred to in Halsburys Laws of England Fourth Edition Volume 1 Agency – Paragraph 820 as set out below:

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<sup>11</sup> This is a substantial reproduction of the Ancillary Defendant's closing submissions filed April 13, 2010.

<sup>12</sup> The claimant received a letter to this effect from the Administratrix of the Estate together with a copy of the earlier Court Order which incapacitates Akindele Looby.

*“Where the agent obtains the money or property of a third person by means of any act beyond the actual or apparent scope of his authority, the principal is not responsible unless the money or property or the proceeds thereof, have been received by him or have been applied for his benefit, in which case, he becomes liable to the extent of the benefit received”.*

38. Although the facts of this case involved a claim between the principle and a third party, the Ancillary Defendant submits that the equitable principle as articulated in the case should be applied to a claim for an indemnity by the Principal against the agent.
39. The Ancillary Defendant submit, if the Court accepts the Claimant’s argument that the Claimant provided insurance coverage to the Defendant during the period September, 2005 to December, 2005 pursuant to an insurance contract between the parties and is therefore owed the sum of EC\$85,108.95, then the Court should also find that the insurance coverage would have been a benefit received by the Defendant during the period of question. The Ancillary Defendant, being the agent would have therefore obtained a benefit for the Defendant through the insurance contract in question. Therefore even if the Court finds that the Ancillary Defendant acted beyond the scope of his authority and entered into an insurance contract with the Claimant, the benefit of the insurance contract being the insurance coverage for the road works project was still received by the Defendant Company. The Ancillary Defendant would have derived no personal benefit from the transaction in question.
40. In addition the Ancillary Defendant notes further that the Defendant Company received EC\$1,099,795.85 from the Government of Antigua and Barbuda for the work completed on the stadium project the period September, 2005 to December, 2005. It is submitted that the stadium works project and the related insurance arrangements for the project are so closely linked that it can be concluded that the monetary benefit received from the Government for the completion of the works should also be viewed as a benefit derived from the insurance arrangements, if the Court find such insurance arrangements to exist, which as stated above is not conceded by the Ancillary arrangement to exist, which as stated above is not conceded by the Ancillary Defendant. The insurance coverage, workmen’s compensation, employer’s liability insurance and contractors all risk

insurance in relation to the cricket stadium project, for which the Defendant has received full payment from the Government of Antigua.

## FINDINGS/ CONCLUSION

41. On the issue of whether the Ancillary Defendant Akindele Looby had the ostensible authority to contract on behalf of the Company Geotech, the Court finds that he did. There is no sufficient evidence to support the Defendants contention that Akindele did not hold out himself to be the C.E.O or that the Claimant had no reason to believe that he had the contractual capacity to do as he did or that Akindele did not appear to have the ostensible authority to conduct business and contract on behalf of Geotech. This finding is supported by the Law set out in the submissions of the parties and reproduced in this Judgment. Further, it appears on the evidence that Akindele Looby negotiated for and contracted with the Government of Antigua and Barbuda on behalf of the Defendant in full view so to speak, of the public and more particularly, the claimant.
  
42. The Defendant cited several authorities in response to the Claimants further and/or alternative argument that in any event the Defendant Company is estopped by section 21 (d) of the Companies Act 1995 (the Act) from asserting that Akindele did not have the authority to the contract on behalf of the Company thereby binding the Company. Those authorities cited against finding the Ancillary defendant as possessing the authority to act, do not deal specifically with the statutory provision applicable in this matter, nor are the foreign provisions referred to in those cases interpreted in the same statutory context as in the instant case. Whereas they are similarities in the legislative provisions under consideration in this case and in that which is referred to in the opposing cited authorities; the plain reading of section 21(d) of the Companies Act 1995 of Antigua and Barbuda preclude the Defendant from denying the binding effect of Akindele Looby's actions in contracting with the Claimant as alleged. Section 83 of the Companies Act is relied on by the defendant also, as being insufficient to validate the acts of Akindele Looby. However, the court is of the view that the s. 83 is specific to irregularity in elections, appointments and defect in qualification of a Director or officer of the company. It is to

be read as mutually exclusive to section 21 of the said Act and is simply not relevant to this case. The governing section for the purposes of determining the validity of the acts of Akindele Looby in entering into a contract of insurance on behalf of the defendant company is the said section 21 of the Companies Act.

43. Further, the common law on the finding of ostensible authority, is set out in the claimant's submissions and reproduced above. On the facts of this case, Akindele Looby did possess the ostensible authority to contract on behalf of the defendant and there is simply no sufficient evidence to the contrary.
44. The 'proposal' prepared and sent to the Defendant Company was accepted by the Defendant. The effect of that 'acceptance' was in effect; in the context of an 'offer and acceptance'; an offer emanating from the Defendant to the Claimant on terms and conditions of the insurance coverage. The said letter, in the court's view acknowledges the existence of the contract of insurance. The defendant was bound. Thereafter, on the acceptance of the offer by the claimant, the defendant had to do what was required to give effect to the contract which it entered into. Letters and e-mails concerning the valuation of equipment and the sourcing of project and insurance funds between the parties and their respective counsels, date into the later part of September 2005. These activities may reflect the tardy and in one instance the failed efforts of the defendant to do what it was contractually bound to do in order to give effect to the bargain it had entered into. The Claimant, signaled its acceptance of the proposal/offer by the issue of the cover letters referred to in evidence. These cover letters reflect the records of the Claimant as having been put at risk for the insured amount and under the terms and conditions effected in the proposal. There is no evidence to the contrary, that the "offer and acceptance" procedure set out in the evidence in this matter constitute the normal course of business.
45. The Court is of the view that the assertion by the Ancillary Defendant, Akindele Looby, that in any event no contract had been signed between the Defendant and the Government for the Vivian Richards Stadium contract is of no moment. There was an unexecuted written contract for the construction of the project that did require insurance coverage.

The was agreement between the parties sufficient to form a building contract and as a consequence work did commence in September 2005. He testified that in September he had sent the contract documents to Dorothy Gitten, the Administratrix of the Estate of George Looby decd. and sole share holder of the Geotech shares. He said he appreciated the fact that he needed her approval. This fact does not act to vitiate the contract with the claimant. He still had the ostensible authority to act. He may have contracted with the claimant prematurely as it turns out (and perhaps even the Government), but did bind the Company all the same. It appears that notwithstanding the absence of approval from Mrs. Gittens, the construction works which required insurance coverage as a prerequisite, commenced. Further, as the Ancillary Defendant himself testified and over which in my view there is no dispute, the Defendant was paid over One Million Dollars, presumably on a *quantum meruit*, for the work ultimately done on the project by the Defendant Company. The same work that was protected by the subject insurance coverage.

46. The ancillary claimant says that he did not receive the cover notes as alleged. I do not accept that evidence. I accept the evidence of Ms. Parchment as preferable to that of the Akindele Looby, as being more inherently consistent, commercially plausible and robust under cross examination. Her evidence bears scrutiny in a manner in which Mr. Looby's does not.

47. The Ancillary Claimant/Defendant, Geotech Company Limited, at the instance of the Administrator of the Estate of Mr. George Looby, decd., the owner of all the shares of the Defendant Company, claims an indemnity from Akindele who without authority knowingly contracted on behalf of the Defendant Company thereby exposing it to the risk and ultimately to loss and damage in the amount of \$86,738.95 for the insurance premium. I accept that as having been the potential loss and damage incurred.

48. The defendant company generated profits from the construction project to the tune of over \$1m. The shareholders or administrator of the Estate to which the shares belonged became aware of the existence of the insurance contract of September of 2005. At this time no action was taken to attempt to bring the companies liability to an end. For the

reasons submitted by the ancillary defendant in his written submissions the court is of the view that the ancillary claimant has not made out a case against the ancillary defendant for an indemnification.

**ORDER**

49. For the reasons provided above, **IT IS HEREBY ORDERED AS FOLLOWS:**

- i. Judgment for the Claimant against the Defendant in the sum of \$85,108.95 being the sums due for the premiums owing arising out of insurance coverage for the period 1<sup>st</sup> September 2005 to 22<sup>nd</sup> December 2005;
- ii. Judgment Act interest;
- iii. Costs payable by the Defendant to the claimant on the Prescribed Cost scale;
- iv. The ancillary claim against the ancillary Defendant, Akindele Looby, is dismissed;
- v. Costs payable by the ancillary claimant to the ancillary defendant at 40% of the costs calculated on the Prescribed Costs scale.



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JUSTICE DAVID C HARRIS  
ANTIGUA AND BARBUDA