

TELECONFERENCE

ANTIGUA & BARBUDA
Wednesday, 19th October 2011

APPLICATIONS AND APPEALS

Case Name: Gloria Watt et al v Vere C. Bird III et al
[High Court Civil Appeal No. 28 of 2011]

Coram/Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, QC, Justice of Appeal [Ag.]

Appearances:

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|--|--------------------------|
| Intended Appellants / Applicants: | Dr. David Dorsett |
| Respondent: | Mr. Hugh Marshall |

Issue: Application for leave to appeal

Result / Order: [Oral delivery]
The application filed herein on 5th August 2011 for leave to appeal, having been withdrawn, is accordingly dismissed with \$1,000.00 costs to be paid by the applicants to the respondents.

Reason: Since the order that the applicants wished to appeal involved the refusal to grant an interim injunction, leave to appeal was not required. (See recent decisions of this court: Danone Asia PTE Limited et al v Golden Dynasty Enterprise Limited et al, Territory of the Virgin Islands HCVAP 2009/002 (delivered 28th September 2009); A, B, C, D v E, Anguilla HCVAP 2001/001 (delivered 19th September 2011)). The applicants therefore withdrew their application for leave to appeal.

JUDGMENTS

Case Name: Antigua Power Company Limited v The Attorney General et al
[High Court Civil Appeal No. 6 of 2009]

Coram/Before: The Hon. Mr. Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Dane Hamilton, QC

Respondent: Ms. Nandi Deterville holding papers for counsel for the 1st and 2nd respondents (The Attorney General and the Hon. Baldwin Spencer respectively)
Dr. David Dorsett (for the 3rd respondent, Antigua Public Utilities Authority)

Issues: Civil appeal – Contract – Agreement between the appellant and third respondent concerning the acquisition of generator sets to increase the electricity generating capacity in Antigua and Barbuda – Whether both Phases I and II of the agreement were formally approved by Cabinet – What is a Cabinet decision – Legitimate expectation – Estoppel – Whether the second respondent acted unlawfully in preventing the appellant from landing and installing the three engines at the power plant at Crabbs Peninsula

Result and Reason: Held: dismissing the appeal and awarding costs to the first, second, third and fourth respondents at two-thirds of the costs awarded by the court below, that:

1. The learned trial judge rightly concluded that the perceived “assurances” and “verbal approval” that the appellant contends had been given by Cabinet, did not amount to a formal Cabinet Decision. Further, there is no clear Conclusion expressed in the same medium as the Cabinet

Conclusion of 9th May 2006, to persuade the Court to find that Cabinet approved the purchases anticipated by Phase II of the Joint Venture Agreement. Accordingly, the trial judge was correct in holding that no Cabinet approval was given for Phase II of the Joint Venture Agreement.

- 2. In determining whether the appellant could be said to have had a legitimate expectation, one needs to ask whether the action of the appellant can be said to have resulted from the representation given by the public authority. The Court is of the view that the appellant felt sufficiently confident that it would be able to have both Phases I and II of the Joint Venture agreement approved, and thus entered into the Letter Agreement with Wartsila Caribbean Inc. on that basis, at its own risk. Any detriment which the appellant suffered derived not from a representation, but rather from a deliberate risk taking which predated any alleged representation. Therefore, legitimate expectation does not arise in the circumstances; the learned trial judge came to the correct conclusion on this issue, albeit with different reasoning.**

Regina (Bibi) v Newham London Borough Council [2002] 1 W.L.R. 237 cited.

- 3. The party pleading estoppel must show that he acted to his detriment as a result of a clear and unequivocal representation of fact made to him. However, it is clear that the appellant company acted in anticipation, rather than in reaction to any representation. It cannot then successfully pass on its risk to the other contracting party. Furthermore, an estoppel by representation does not normally stand alone in the sense of giving rise to a cause of action. An estoppel is used to prevent a party from insisting on his strict legal rights, when it would be unjust to allow him to do so. In essence, it operates as a shield and not as a sword.**

Amalgamated Investment & Property Co. Ltd. (In Liquidation) v Texas Commerce International Bank Ltd. [1982] Q.B. 84 applied.

- 4. As of the date of the landing of the three engines on 3rd December 2007, there was no Joint Venture Agreement in place nor was the Court able to find any written agreement in relation to the use of the power plant at Crabbs to house the first engine. The fact that the first engine – the 17 MW genset – remained in the ownership of the appellant and was placed at the power plant at Crabbs Peninsula by the leave of the Crown, made the appellant nothing more than a mere licensee of the power plant.**