



THE EASTERN CARIBBEAN SUPREME COURT
COLONY OF MONTSERRAT CIVIL

IN THE HIGH COURT OF JUSTICE

CLAIM NO: MINIHCV2009/0002

BETWEEN:

INTERNATIONAL PAIRS LIMITED

Claimant

And

HONOURABLE ATTORNEY GENERAL
DR. THE HONOURABLE LOWELL LEWIS

Defendants

Appearances:

Mr. Charlesworth Brown for the Claimant
Mrs. Sheree Jemmotte-Rodney for the Defendants

2014: May 01
2014: September 16

Whether there was a contract between the Claimant and the Defendants, Whether the Chief Minister and/or the Acting Chief Minister could have entered into a contract to bind the government of Montserrat, whether the defendants are liable to the Claimant on a Quantum Meruit basis?

Judgment

- [1] **Redhead, J. (Ag):** The Claimant, International Pairs Limited Claims against the Defendants damages in the sum of £350,000.00 as loss of profits or in the alternative £86,333.00 on a quantum meruit basis for repudiation of a contract which the Claimant alleges it entered into with the Defendants on 27th August 2008.
- [2] Mr. Ross Honey is the Chief Executive of the Claimant Company which is a United Kingdom (UK) based Company specializing in using events as a medium for marketing platforms.

- [3] The Claimant's case, to encapsulate it in a nutshell, is that Ross Honey was invited to Montserrat to "Showcase" the Claimant's capability in promoting Montserrat as a golfing destination thereby injecting much needed capital in Montserrat's economy. This was in the year 2008.
- [4] If I may interject here, Montserrat was devastated by a series of volcanic eruptions beginning in 1995, it is therefore, in my view, that against that background the government was anxious in looking at ways and means to develop the island of Montserrat and to move it back to some form of economic viability.
- [5] Mr. Ross Honey prepared documentation and travelled to Montserrat in August 2008 with a Mr. Roach and a Mr. Bramble. According to Mr. Honey he met his own travel expenses.
- [6] In Montserrat he met with the Chief Minister Dr. Lowell Lewis, Hon. John Skerritt, Financial Secretary, Mr. Eugene Skerritt, Permanent Secretary and Hon. Mr. Easton Farrell.
- [7] Mr. Honey made a presentation or a "pitch" as he prefers to call it to the men. At that presentation, he was told that the men were very impressed. The Chief Minister himself was so impressed with Mr. Honey's presentation that he arranged for Mr. Honey to travel to a possible site of a golf driving range at Silver Hills early the next morning in order to hit golf balls and to take publicity shots while at Silver Hills.
- [8] According to Mr. Honey's testimony, the Chief Minister said he could make available \$10,000.00 immediately for a driving range.
- [9] According to Mr. Honey, he advised Dr. Lewis that this would be a waste of money and that it would be better to establish a proper plan. Dr. Lewis disputes this event.
- [10] Mr. Honey was due to leave the island on August 2nd 2008. However, before he left, Mr. Honey was met at the airport by Dr. Lewis who hand delivered a letter to him.
The letter dated the 2nd August 2008, is in the following terms:

"Mr. Ross Honey
CEO International Pairs,
No.15 Walen Gardens
Horndean
Hampshire POB Q PP
United Kingdom

Dear Ross,

It was a pleasure to meet [with] you and to share with you our dreams of a restored Montserrat. Your expressions of support were very encouraging and I expect great results from the collaborations which may take place between the Government of Montserrat and your company 'International Pairs'.

We will actively pursue the opportunity for Montserrat to benefit from your marketing services and await the details and estimates for phrase 1 of your proposal. In addition, I believe that it is important for the establishment of a high quality golf course in Montserrat to be a priority, and that although we encourage the private sector to take such development forward, that the government of Montserrat should take the lead in making such a facility become a reality.

I shall therefore be proposing to my colleagues that we identify a portion of land owned by government in the Silver Hills area, to be made available for a Club House. And that we invite relevant land owners to join us in co-operation, that will work together to develop a proposal for an 18 hole state of the art golf course in the Silver Hills.

I shall suggest a government owned company to be a funding shareholder. Once I have feedback from my colleagues and the land owners in the area, I will write to you about the next steps to be taken. Once again it was a pleasure to meet [with] you and I look forward to working with you.

Best wishes,

Yours Truly,

Lowell Lewis

Chief Minister.”

[11] The Claimant alleges that there was a concluded contract between it and the defendants. The Defendants, however, on the other hand, dispute this.

[12] Learned Counsel, Mrs. Jemmotte-Rodney on behalf of the Defendants contends that the issues for the court to determine are:-

- (a) Whether there was a contract entered [into] between the Claimant and the Government of Montserrat.
- (b) Whether it can be said that Mrs. Cassell-Sealy and/or the 2nd Defendant, Dr. Lewis had or whether the 1st Defendant clothed them or either of them with ostensible authority to act on behalf of the government of Montserrat in all matters relating to the Claimant.
- (c) Whether the Defendants are liable to the Claimant for damages for the repudiation of contract and loss profit?
- (d) Whether the Defendants are liable to the Claimant for any liabilities incurred.

[13] I accept that it is of critical importance to determine first and foremost whether there was a valid contract existing between the parties by the 27th August 2008 or at any time.

[14] The parties to my mind conducted most of their negotiations through e-mails. It is therefore through this mass of emails I must examine in order to make that determination.

[15] Mrs. Jemmotte-Rodney, Learned Counsel for the Defendants contends that it is trite law that for a binding contract to exist there must be an offer and matching acceptance supported by consideration and the intention to create legal relations.

[16] Learned Counsel for the Defendants referred to Scammell v Ouston¹ to demonstrate the point that there must be a definitive offer, one which is not vague and acceptance, Ousten was a case involving hire purchase agreement.

[17] Vicount Simon, L.C. at page 15 opined :- "Apart from the objection that if the contract is to be treated as a contract of sale in the terms suggested above, there is no signature by the applicants as the party to be charged, accepting the condition, it appears to me that the crucial sentence, "This order is given on the understanding that the balance of the purchase price can be had on hire purchase terms over a period of 2 years" is so vaguely expressed that it cannot, standing by itself, be given a definite meaning. That is to say, it requires further agreement to be reached between the parties before there would be complete consensus ad idem if so, there was no contract and therefore, no breach."

Viscount Maugham at page 16 said

[18] "In order to constitute a valid contract the parties must so express themselves that their meaning can be determined with a reasonable degree of certainty. It is plain that, unless that can be done, it would be impossible to hold that the contracting parties had the same intention. In other words, the consensus ad idem would be a matter of conjecture."

[19] Mrs. Jemmotte-Rodney on behalf of the defendants in her written submissions argues that the Claimant's claim that an offer was made to the Government of Montserrat to provide marketing services to the value of £350,000.00, it is the Defendants position that there was no offer made by the Claimant which could have been accepted by the 1st Defendant thus resulting in a binding contract for the provision of services to the value of £350,000.00.

[20] Mrs. Jemmotte-Rodney contends that the Claimant alleges in its Statement of Claim and in the Witness Statement of Ross Honey, that the proposal submitted by International Pairs was a memorandum of understanding, which was submitted at the request of the Defendants.

[21] Mr. Honey said in his evidence in cross-examination that he does not know what a Memorandum of Understanding is, but that the document was submitted by International Pairs for execution by the government of Montserrat.

¹ [1941] 1 All ER 14

- [22] Learned Counsel for the Defendants argues that there was no indication anywhere in the document or even in the cover letter or the email to which the document was attached, which indicates that the proposal was submitted for the purpose of being executed by the government of Montserrat.
- [23] By paragraph 6 of the Claimant's Amended Statement of Claim, the Claimant alleges "The 2nd and 3rd Defendants represented to the Claimant that they had been given the authority by the Government of Montserrat to act on its behalf and asked the representative of the Claimant to draft a Memorandum of Understanding that which they [he] did. The cost stated in the Memorandum of Understanding (MOU) stated that for the first phase the amount was £350,000.00.
- [24] The said Memorandum of Understanding (MOU) is exhibited hereto and was presented to the Defendants and marked "RH1" and will be referred to at the trial for its full force and effect.
- [25] The MOU was not executed by both Claimant and Defendants at the same time because the Claimant was informed that other Ministers of government who were not at the meeting would have to ratify the said MOU.
- [26] On the 27th August 2008 the second Defendant accepted the offer of the Claimant and authorized the Claimant to proceed according to the terms of the MOU by sending an email in the following terms: "At last I have something positive to report for all intents and purposes we are in agreement finally. I will sometime today tell you how much the amount will be. But take this as my agreement to proceed.
- [27] So by reason of the aforementioned premise, the second defendant warranted that she was authorized by government of Montserrat to act on behalf of the Government of Montserrat in all matters concerning the MOU and the Claimant provided services and goods and incurred expenses in reliance on the said warranty."
- [28] In cross-examination Mr. Honey insisted that he did not know what an MOU is. This to my mind is startling for the following reasons. Mr. Honey is a businessman, conducting business internationally. His Statement of Claim is littered with the allegations about MOU, for example his pleaded case is that on 27th August 2008 the second Defendant accepted the offer of the Claimant to proceed according to the terms of the MOU by sending an email "at last I have something positive to report we are all in agreement..."

- [29] The Claimant has hitched its wagon to that email by claiming that this email was the acceptance of its offer. If Mr. Honey does not know what a MOU is how could he say or allege that Mrs. Roslyn Cassell-Sealy accepted the offer of the Claimant to proceed according to the terms of the MOU. If Mr. Honey who is acting on behalf of the Claimant did not know what an MOU is, how would he know what the terms of the MOU are?
- [30] Moreover the Claimant pleads in paragraph 10, by reason of the aforementioned premises, the second Defendant warranted that she, Roselyn Cassell-Sealy, was authorized by the government of Montserrat to act in all matters concerning the MOU and as a result the Claimant provided services and goods and incurred expenses in reliance on the said warranty.
- [31] According to the Claimant because of the warranty by the second Defendant that she was acting on behalf of the government in all matters concerning the MOU the Claimant provided services, goods and incurred expenses.
- [32] More startling, in my view, is that Mr. Ross Honey in his Witness statement, which he signed says inter alia:-
- [33] "I was told by the Chief Minister to prepare a Memorandum of Understanding (MOU) between the parties after the meeting in Montserrat. This was done on my return to London and then submitted to the Honourable Roselyn Cassell-Sealy in her capacity as acting Chief Minister.
- [34] Mrs. Roselyn Cassell-Sealy told me that the MOU needed the agreement of her fellow minister and after she received their agreement she would inform me of it"
- [35] Yet Mr. Ross Honey swears that he does not know what a MOU is. I cannot accept this.
- [36] I point to the fact that the Claimant in its written submissions says that "the Claimant relies upon the submissions and evidence already presented in its Amended Statement of Claim filed 1st July 2009, the Witness Statement of Ross Honey filed 12th October 2011 (Claimants first Witness Statement; the second Witness Statements of Ross Honey filed 14th March 2013 Claimant's second witness statement.)
- [37] Mr. Honey says in that Witness Statement that on his return to London he then submitted it to the Honourable Roselyn Cassell-Sealy. What was sent to the Honourable Roselyn Cassell-Sealy?
- [38] In my considered opinion the following was sent to her on the Claimant's letter head.

"The Honourable Chief Minister,
Office of the Chief Minister
P.O. Box 292
Government Headquarters
Montserrat

11th August 2008

Dear Minister Cassell-Sealy,

Thank you so very much for meeting with us in Montserrat last week. I must confess that having met and spoken with the people of Montserrat at so many different levels during my brief visit, that I have been deeply touched by Montserrat and I am even more determined to work with you and your colleagues to ensure we deliver a world class project for the benefit of Montserrat.

I note with pleasure that you have accepted our invitation to attend the World Final in Scotland and we do look forward to co-hosting you and your colleague along with the government of Scotland.

The purpose of this document is to provide an expanded overview of the objectives that will be achieved in phase 1 of the agreement between the government of Montserrat and International Pairs Ltd (IPL). This document should be regarded as a guide to the minimum benefits that Montserrat will gain from this agreement.

In the interest of accomplishing the maximum benefits of the upcoming International World Final in Scotland and the arrival of government officials from Montserrat **a lot of ground work is currently being undertaken on a good will basis by International Pairs.**

Many contracts have been made already and the response to date has been very positive.

I am cognizant of constraints that good governance and administrative processes put on your ability to act as quickly as you would like, but I am re-assured that you understand the need for a decision as soon as possible on this project.

We are totally confident that the objectives set out by the government of Montserrat will be achieved and everybody involved in initiating this relationship will be proud to have played a role in that important milestone for the people and island of Montserrat.

Ross Honey
Chairman..."

[39] Attached to this letter was phase 1.

"International Pairs are prepared to commit to the following as part of phase 1.

Deliverables

- A detailed marketing support plan to dovetail into existing initiatives.
- Hosting two government officials at the World Finals in Scotland in September 2008.
- Staging of a World Final qualifying in Montserrat golfers in Antigua, early September 2008.
- Press PR lunch in Antigua
- Press PR lunch in Montserrat
- Arranging for full hosting including; transporting of a Montserrat Pair in the World Final September 2008.
- Development of new events to be held on Montserrat.
- Production and global distribution of a publication promoting Montserrat.
- In bound press trips from commercial and tourism sectors during 2008/2009.
- The organization and running of a promotional road show in target countries to coincide with international Pairs National Finals.

- The establishment of a twinning initiative to involve schools and towns.
- The activation of a network of golfing contacts that would lead to the construction of a golf course on Montserrat.
- Recognition as official global partner of International Pairs for 2008/2009.
- Promotional presence at an International Pairs event during 2008/2009.
- Exposure on International Pairs TV program.
- Promotional DVD to be shown at International Pairs World Final 2008 in September.

Timeline

We are committed to delivering the above within 12 months (September 2008 – August 2009) of receiving written confirmation from the government of Montserrat of their willingness to work with International Pairs on the terms detailed below.

Financial Arrangements for phase 1

The cost of this project will be £350,000.00 payment will be structured to give the government of Montserrat maximum flexibility to identify funding streams while the project is progressing.

To this end we are proposing payment schedule of £100,000.00 payable before September 21st, 2008 and ten (10) monthly payments of £25,000.00 due on 21st, day of each subsequent month.

International Pairs is confident of our ability to deliver on this project and look forward to this being the start of a long successful relationship.”

[40] In my considered opinion the above is a proposal /suggestion presented by the Claimant to the Defendants for discussion. Mrs. Jemmotte-Rodney argues that in assessing the existence of an offer, the Court should employ an objective approach. She says that the Claimant’s position is that an offer was made to the Government of Montserrat for the Claimant to provide marketing services to the value of £350,000.00. It is the Defendants position that there was no offer made by the

Claimant which could have been accepted by the first Defendant thus resulting in a binding contract for the provision of services to the value of £350,000.00.

[41] Mrs. Jemmotte-Rodney argues that the document does not record any agreement between the parties; it does not have any attestation clauses or any other badges of an agreement ready for execution.

[42] It must be remembered that the Chief Minister handed Mr. Ross Honey a letter dated 2nd August 2008 when the latter was about to depart Montserrat. In Paragraph 2 of that letter the Chief Minister wrote the following:-

“We will actively pursue the opportunity for Montserrat to benefit from your marketing services and await the details and estimate for phase 1 of your proposal.”

[43] The next communication received from Mr. Ross Honey was a letter dated 11th August (8 days later) with phase 1 attached, I am of the view that this letter was in response to the Chief Minister's request to “await the details and estimates for phase 1 of your proposal.”

[44] I am fortified in my view, as Mr. Ross Honey in that said covering letter wrote:

“The purpose of this document is to provide an expanded overview of the objectives that will be achieved in phase 1 of the agreement between the government of Montserrat and International Pairs.”

[45] In its skeleton argument (I put it that way because the skeleton submission is not signed by counsel but by Mr. Ross Honey.) the Claimant submits, “That the evidence accords with the witness (Mr. Ross Honey) as to what occurred.” He had travel to Montserrat and attended the reception and made his presentation or “pitch” as he referred to it.

[46] He had provided details as to what could be done but there was no reference to time of the initial visit to a price other than the reference by the Chief Minister that what IPL would be doing for Montserrat “would cost the government over USD\$3 million” i.e. the real value of the services. He had had meetings with cabinet members. He had visited a possible site for the driving range. He had been handed this letter prior to leaving the island. The letter was inviting him to make a formal proposal with details and estimate so that the government could pursue the proposal. In law it is

respectfully submitted that the "formal proposal" sought could be nothing other than an offer. He had been invited to make an offer to the government."

[47] It is submitted on behalf of the Claimant, at this stage that the government simply invited Mr. Ross Honey and IPL to make an offer with which they could then consider and either accept or reject or counter offer.

[48] Dr. Lewis in an e-mail to Mrs. Roselyn Cassell- Sealy on 14th August 2008 sought to explain his letter of 2nd August 2008 to Mr. Ross Honey.

In the email he wrote inter alia:-

"My letter to Mr. Ross Honey on the 2nd August 2008 stated as follows:

"We will actively pursue the opportunity for Montserrat to benefit from your Marketing Services and await details and estimates for Phase 1 of your proposal.

This was a request for them to submit a cost proposal and not a commitment to accepting any proposal submitted, as this would be dependent on resources available.

Commitments by Government of Montserrat of this scale can only be made through an agreement drawn up and approved by the office of the Attorney General. And we would have to demonstrate to DFID that their financing for marketing services has been subjected to the tender process.....

Many thanks for your help.

Lowell".

[49] I should here state, for the avoidance of doubt that shortly after Mr. Ross Honey visited Montserrat. Dr. Lewis went on vacation and Mrs. Roselyn Cassell-Sealy was appointed to act as Chief Minister.

[50] On 19th August 2008, in a ministerial minute to Roselyn Cassell-Sealy from the Chief Minister, he said, "Thank you for sending me a copy of Mr. Honey's proposal."

[51] It is not a format that would make the drafting of a contract easy, as there is not enough detail regarding the estimates.

[52] You have probably responded already, but bearing in mind the constraints of financial order and other financial pressures on our budget, my response would be as follows:

“Dear Mr. Honey,

Many thanks for your proposal.

We will review the document and adjust it to fit our needs.

A more detail breakdown of the estimates would be appreciated to meet the requirements of our procurement of our services procedures. We are impressed with the speed with which you have moved to make plans and we will make arrangements to honour the short term activities that you have embarked on in good faith.

I must however bring to your attention that the entire annual budget for our department of Tourism and indeed for the office of the Chief Minister are both less than \$EC 1.5 Million and that in order to make a commitment, we would have to ring fence funds which we are keeping in reserve, to meet a short fall in revenue this year.

We are already having difficulty in finding money to finance our Christmas Festival and the full participation of our cricket team and golf teams in regional tournaments or to finance the completion of our recreational facility at Little Bay; and we are yet to deal with cuts in this year's budget for keeping our record crew at work and health sector requirements for medical supplies and overseas specialist medical crew.

I have therefore taken the liberty to indicate which items in the proposal we will consider making a priority for now and then defer a substantive contract for consideration in next year's budget.....

Kindly submit an itemized costing of the above list so that we can determine what we can afford to have in phase 1 project that would set the base line for a substantial contract in the future.

Thank you for your continuing interest and efforts.”

[53] By the above Dr. Lewis was suggesting trimming phase 1, deliverables project because of budgeting constraints. As suggested by the Claimant there were 16 items or events. Dr. Lewis was

suggesting reducing those events by 10. On 27th August 2008 there was an email from Roselyn Cassell-Sealy to Reuben Meade, Charles Kirnon, John Skerritt in the following terms, inter alia :-

"Gentlemen, I am seeking, no I need your written support on the International Paris proposal, let us look at this matter.

- 1) The proposal will allow Montserrat to be introduced to four companies of golfers, business persons, Scottish Government officials, persons/institution interested in building golf courses in the Caribbean.
- 2) The CEO Mr. Ross Honey understands and accepts that we are challenged with immediate large outlay of funds.
- 3) Mr. Honey so believes in the project that he has actively gone so far out on a limb that at this point he is willing to proceed with outlaying his own funds. Today if we commit to the relationship, now.
- 4) We could agree to a future relationship based on the outcome of our visit to Scotland, which will now have to be at our costs if he outlays his own funds upfront at this time to date he has set up the following:
 - (a) Have on standby a film crew to arrive in Montserrat on September 10.
 - (b) Have set in motion the International Pairs contest for Antigua to select 2 Montserratians to go to Scotland.
 - (c) Have met with the Provost (Government Official) in Scotland and setup meetings with him/her.
 - (d) Have arranged for public recognition of Montserrat team in Scotland.
 - (e) Have set up business working, net-working team.
 - (f) Have set up VIP reception at Champion Golf meet.
 - (g) Have set up meeting with Economic Development Department of Scotland to roll out initiatives (including persons who want to build golf courses).

(h) Have arranged for the Montserrat team to Links Trust Officials to set up twining with St. Andrews and Carnoustie.

(i) Have set up meeting with Herb Cohler (hotel owner) at his hotel.

I think that you will admit that he has gone far ahead with the preparation and has now become extremely excited about the outcomes. He has seen the potential of the Montserrat International Pairs relationship.

I think we have all gone too far to turn back now.

As I met with the Governor today, I raised it in a kind of left handed way and his response was supportive. What I am seeking is to have you agree to this:

- That we agree to go to Scotland. Who the "we" are will be determined by us
- That we commit to Mr. Honey that we will be willing to take that process forward for the next year.
- That we agree with Mr. Honey that he utilizes his own funds at this time.
- That we agree with Mr. Honey that he could incur expenses between EC\$275,000.00 to EC\$500,000.00 on our behalf but we will want a report on outcomes after the first \$100,000.00 has been spent. And he can only go on after we agree that we are happy with the outcomes and we agree what the next EC\$100,000.00 would be spent on.
- That we agree that the relationship would be for 1 year in the first instance

I will share that with FS but I would like your written support on this. I am, as you can see very passionate about this project. It can work and inspite of DFID'S input, we can only develop Montserrat if we facilitate the development.

If DFID has no faith in the future of Montserrat, why are we putting all our money in the MDC? Why are we putting all this money in Tourism? Why are we reforming the public service? The ferry may bring 60-100 day tourist in Montserrat in a week, we need to compare this with bringing 200 high income tourist for one week. And as Mr. Honey is proposing to spend his own money up front, this takes the pressure of finding the funds immediately off us; this indicates a level of commitment and forces Mr. Honey to be

exceedingly productive and he must therefore be very successful in his outcomes. But he is sold on this. He believes in it.

I welcome your input and I crave your swift and timely input/suggestions et al in this process. I would wish to have your written approval to share with CM. But most importantly we need to give Mr. Honey a response soon, so we can utilize all the activities he has undertaken to date.

I await your input.
Thanks
Roselyn”

- [54] There can be no doubt in my mind, that there were internal discussions among the Ministers of government whether the proposals outlined in Phase 1, submitted to government by Ross Honey should be accepted as shown in the letter written by Roselyn Cassell-Sealy to her colleagues. In my considered view, Roselyn Cassell-Sealy made a plea to her colleagues to accept Mr. Honey's proposals not as he outlined in Phase 1 but a modified version of his Phase 1.
- [55] It should be noted that under Financial arrangements for Phase 1. Mr. Ross Honey was suggesting a cost of the project of £350,000.00. He was proposing a payment schedule of £100,000.00 payable before 21st September, 2008 and ten (10) monthly payments of £25,000.00 due on 21st day of each subsequent month.
- [56] In the correspondence of 27th August, 2008 Roselyn Cassell-Sealy was proposing to her colleagues that “to agree with Mr. Honey that he utilizes his own funds”.
- [57] Agree with Mr. Honey that he could incur expenses of EC\$275,000.00 to EC\$500,000.00. There should a report after the first EC\$100,000.00. And Mr. Ross Honey could only go on if they (the Ministers) were happy with the outcome then the balance, EC\$100,000.00 would be spent.
- [58] On 27th August 2008 at 10:57am when Roselyn Cassette-Sealy wrote: “At last I have something positive to report. For all intents and purposes we are all in agreement finally...”
- [59] I ask, what were they all in agreement about? Certainly it could not be that they were all in agreement about Mr. Ross Honey's proposal or his financial arrangements for phase 1 which in my view is vital for the formation of a contract. Roselyn Cassell-Sealy was proposing something

entirely different from what Mr. Ross Honey was suggesting. In that way the parties were far apart. There could have been no **consensus ad idem**.

[60] On behalf of the Claimant it is contended that the letter of 11th August 2008 is an offer in clear, plain and simple terms. It anticipates an acceptance in writing. Tenders a timeline and states categorically that “we are committed to delivering within 12 months of receiving written confirmation from the government of Montserrat of their willingness to work with International Pairs on the terms detailed.” Even if I were to accept that this was an offer by the Claimant, there was clearly no acceptance by the defendants on the terms proposed by the Claimant.

[61] On behalf of the Claimant it is submitted that the covering letter plus the first two pages of the offer would have been sufficient in law to constitute an offer by themselves; but it goes even further in providing yet further details in Appendix 1 under the title Expanded Delivery Detail of phase 1 for Montserrat.

[62] First of all I do not accept that time line of delivery within 12 months is vital so far as the concluding of the contract is concerned. It is further submitted on behalf of the Claimant that this was the Formal Proposal which was in law an offer which was made to the government. The government would be left in no doubt as to what it was that IPL was offering to them in terms of all the constituencies element of the contract that followed thereon:- parties, price, installment, scope and duration.

[63] While I accept that maybe so, but the vital question is, was there acceptance by the Defendants on those terms?

[64] Let me examine the email in which the Claimant relies on for acceptance of the offer.

The email says:-

“At last I have something positive to report. For all intents and purposes we are all in agreement finally. I will sometime be able to tell you how much the amount would be; but take this as my agreement for you to proceed. Either myself or both Reuben Meade and I will be attending. Again before day's end I will let you know. We have a little bit of a challenge over the next two days because there is a Jamaican Team on island for the next

two days, working directly with government so ministers would be pressed with time. I know that you may still be in France, so I am emailing this to William as well.

I will email you later.

Roselyn”

- [65] It is significant in my view that in that email, Roselyn Cassell-Sealy told Mr. Ross Henry, “I will sometime today be able to tell you how much the amount would be.” What amount would she be referring to? It must be, in my view not the amount as outlined in phase 1. There was no need, in my opinion, for Mrs. Roselyn Cassell-Sealy to tell Mr. Ross Honey how much the amount would be if she accepted Mr. Ross Honey’s Financial arrangements for phase 1, which she had, so in my mind it can not be said by any stretch of the imagination that she was accepting on behalf of the Defendant any financial arrangements for phase 1.
- [66] It is obvious, in my view, that Mrs. Roselyn Cassell-Sealy had in mind the proposed financial arrangements she had put before her colleagues and which in my judgment was agreed to, this is why in my view the email was couched in those terms. At last I have something positive to report, in all intents and purposes we are all in agreement finally. As I have asked, agreement about what? It should be noted that nothing in the financial arrangement for phase 1 is mentioned by Mrs. Roselyn Cassell-Sealy.
- [67] It must not be forgotten that when Mr. Ross Honey put forward his phase 1 programme he was hoping to have written confirmation from the defendants of the Government’s willingness to work with the Claimant on the detailed terms outlined by him i.e. cost of the project which was £350,000.00. This he never received from the Defendants at anytime.
- [68] Mr. Ross Honey was proposing a scheduled payment of £100,000.00 before September 21st, 2008 and ten (10) monthly payments of £25,000.00 due on 21st day of each subsequent month. None of these conditions was mentioned in the email of 27th August 2008 at 10:57.
- [69] I agree with the submission on behalf of the Claimant, that the court is entitled to draw inferences from this email but I do not agree that given the background in correspondence between the parties at that point and the making of a formal offer in all material respects by IPL, this was an acceptance of all parts of that offer with the exception of the exact price.

- [70] In my judgment, the price which is a vital element of the contract and the payment schedule was never mentioned in the email of 27th August 2008 at 10:57am, let alone agreed to by the parties.
- [71] Accordingly, Mrs. Roselyn Cassell-Sealy in that email said "I will sometime today be able to let you know how much the amount would be." There were ten emails passing between the parties after that email on 27th August 2008 at 10:57am on which the Claimant places reliance for the formation of the contract.
- [72] The email of note to my mind following, remembering of course Mrs. Roselyn Cassell-Sealy told Mr. Ross Honey 'sometime today' she will be able to let him know how much the amount would be, this was the email 27th August 2008 at 16:25pm from Mrs. Roselyn Cassell-Sealy. She told him "The amounts that could be spent is between \$275,000.00 and \$500,000.00 over the period, what I am seeking is for you to spend \$100,000.00".
- [73] That is the amount that she said she would tell him later. This was subsequently rejected by Mr. Ross Honey (2.85).
- [74] In my opinion it is inconceivable that Mr. Ross Honey sent such a proposal/offer to the Defendants, there is no discussion on the proposal, no discussion on the financial schedule, particularly in light of the fact that the defendants were strapped for cash. And the next email Ross Henry receives from the defendants "We are in agreement finally".
- [75] The email of 28 August 2008 at 18:32pm William Bramble on behalf of IPL wrote to Mrs. Roselyn Cassell-Sealy saying inter alia -

"We have already spent in excess of £30,000.00 which translates to \$150.00 dollars E.C
(this is more like \$150,000.00 EC)

Therefore in order for this exciting project to proceed we will need a financial commitment from the government of Montserrat. We need to ensure that the government is in a position to commit EC\$350,000.00 (£70,000.00 to phase one of this project as previously outlined, payable by September 21, 2008. -This is certainly a counter offer on behalf of the Claimant.-

We respectfully cannot accept phased payments of EC\$100,000.00/£20,000.00 as all of our costs are front loader and we have already spent in good faith as a sign of all of our commitments, in excess of £30,000.00."

[76] In my considered opinion, this email was an attempt, nothing more than an attempt at negotiating for a higher sum i.e. EC\$350,000.00 over that which was offered by the defendants of EC\$100,000.00 by email on 27th August 2008 at 16:25 pm.

[77] The Claimant says that the contract on 27th August 2008 at 10:57 for £350,000.00 and a payment schedule of £100,000.00 by 21 September and ten monthly payments of £25,000.00 was accepted. This was clearly not so as these were the only sums and conditions that were on the table on 27th August 2008 at 10:57. Why is the Claimant putting forward different figures the following day? This clearly demonstrates to my mind that no contract was crystallized on the 27th August 2008 at 10:57. That could not be the case, there was no consensus ad idem.

[78] Finally on the other aspect of this matter, I refer to the letter sent to Mrs. Roselyn Cassell-Sealy on 19th August 2008, by Dr. Lewis in which he reminds Mrs. Roselyn Cassell-Sealy, "bearing in mind the constraints of financial orders and other financial pressures on our budget..."

[79] And the suggested reply to Mr. Ross Honey – "We will review the document and adjust it to fit our needs".

[80] In that letter Dr. Lewis wishes to bring to the attention of Mr. Ross Honey that the entire budget for the Department of Tourism and the office of the Chief Minister is both less than EC\$1.5 million, which is much less than the cost of the project. Again when one looks at the schedule payment Mr. Ross offers the government; £100,000.00 payable by September 2nd, 2008 (roughly EC\$400.000) in just over one (1) month after his proposal, then 10 monthly payments of £25,000.00 (equivalent to about EC\$100,000.00) due on 21st day of each subsequent month for the year 2008, that would be October, November, December. So for the rest of the year 2008 according to my calculations the government would be required to pay about EC\$800,000.00 on a budget of EC\$1.5 million. That to my mind would have been a financial impossibility.

[81] Having regard to that letter referred to above, from Dr. Lewis, I am of the view, for Mrs. Roselyn Cassell-Sealy to have accepted Mr. Honey's proposal whole-scale eight (8) days after that letter would be totally irresponsible on her part. That is why in my opinion Mrs. Roselyn Cassell-Sealy

was putting forward to her colleagues the proposal she conceives, trying to get Mr. Ross Honey to spend his own money to the tune of EC\$275,000.00 to EC\$500,000.00 upfront etc. It will be observed that Mrs. Roselyn Cassell-Sealy was quoting figures in EC whereas Mr. Honey was quoting in £ (Pound Sterling). Mrs. Roselyn Cassell-Sealy was hoping to get her colleagues to agree to that proposal put before them, they did and then to put this proposal to Mr. Honey to see if it was acceptable to him. That is why, in my opinion, the email of 27th August 2008 at 10:57 was couched in those terms, "At last I have something positive to report for all intents and purposes we are all in agreement...I will sometime today be able to let you know how much the amount would be."

[82] Mr. Honey knew how much the amount would be, he communicated the amount to Roselyn Cassell-Sealy. This is clearly, an indication that she did know the cost and was proposing to send him a new price. She was proposing to make a counter offer.

[83] After Roselyn Cassell-Sealy sent the email of 27th August 2008 at 10:57, she sent an email to Dr. Lewis 27th August 2008 at 16:09.

"Dear CM

This email is to confirm our telephone discussion this morning with respect to International Pairs Ltd. My understanding of the issues we discussed are:-

- 1) That you are in agreement with us indicating to International Pairs that we wish to work with them.
- 2) The arrangement should be made with International Pairs Ltd. to facilitate them to go ahead with the relationship with the government of Montserrat.
- 3) That you would utilize the Tourism Challenge Fund to fund this arrangement.
- 4) That Rueben Meade is the best person to attend the function in Scotland (I have a Health Ministers Meeting to attend at the same time.)
- 5) That International Pairs Ltd. formally invites me to Scotland.
- 6) That you are concerned about DFID'S email about possible repercussions
- 7) That you are concerned that we may loose the goodwill of International Pairs Ltd.

8) I have a concern that they have gone so far, that it is impossible to turn back."

[84] That email from Mrs. Roselyn Cassell-Sealy to Dr. Lewis and her other colleagues indicates to my mind that she could not have intended by the email of 27th August 2008 at 10:57 to accept the proposal of Mr. Ross Honey, barely five hours after she sent this email on the 27th August 2008 to Dr. Lewis.

[85] She is having a conversation with Dr. Lewis, Chief Minister, who had spoken to her in response to Mr. Ross Honey's proposal. She is sending an email on 27th August 2008 at 16:09 to Dr. Lewis and copied it to her colleagues, confirming their conversation in response to International Pairs Ltd. Proposal and their approach to the proposal. This email to Dr. Lewis was at 16:09. Why, would Mrs. Roselyn Cassell-Sealy be sending an email in those terms to Dr. Lewis verifying a conversation that they had had earlier and the approach they should take in response to Mr. Ross Honey's proposals, if, in her mind she had already accepted Mr. Honey's proposal on behalf of the Government of Montserrat.

[86] Mrs. Jemmotte-Rodney in her submissions, makes the obvious point that an acceptance is a final and unqualified, unequivocal expression of willingness to be bound absolutely and unconditionally by all the terms of the offer. For an acceptance to be valid, it must precisely fit the terms of the offer, if it does, then there may well be a further step in negotiations; but it cannot lead to a firm contract. To constitute a binding contract there must be a concluded bargain; and a concluded bargain is one which settles everything and leaves nothing to be settled, addressed or approved by an agreement between the parties **May and Butcher Ltd. v R²**.

[87] As I have said, the price, the cost of the project was a necessary and vital element to be settled. Up to this day it remains unsettled.

[88] In my judgment there was absolutely no contract entered into between the parties on 27th August 2008 at 10:57am or subsequent to that date.

[89] It is submitted on behalf of the Claimant that by the letter of 4th September 2008 it is clear evidence that there was a contract between the parties and that the government was intimating breach of

² [1934 2KB at p21]

that contract; and that they are asking for a schedule of the damages of the cost that International Pairs Ltd. have incurred up to that date.

[90] The letter from Dr. Lewis copied to Roselyn Cassell-Sealy, Reuben T Meade, Eugene Skerritt, James M. Wood (Attorney General) and Elijah Silcott dated 4th August 2008, says in part as follows:

“Dear Mr. Honey,

Re: Pairs International

A number of emails have been brought to my attention, concerning expenditure on this project.

Unfortunately, the necessary procedure to allow for authorization of these sums has not been followed.

In the circumstances I must ask that you cease any further expenditure with immediate effect. I appreciate that this may disrupt plans that are ongoing but I have been advised that you may not be able to recover any further expenditure if authorization is not secured...”

[91] It is quite clear that in one of the communications from Dr. Lewis to Mr. Ross Honey, Dr. Lewis was requesting from Mr. Honey a schedule of expenditure. It is contended on behalf of the Claimant that there is no other reasonable construction that can be given to the letters of the 4th and 5th September; and the evidence in court of Dr. Lewis, other than the defendants were liable in damages to the Claimant on the contract. There could be no other basis for there to be acknowledgment of “liability” than that there was a contract and that it had been breached.

[92] The Claimant contends that indeed in evidence, Dr. Lewis frankly admitted that he had taken advise and argues that the court may reasonably infer that the legal advise came from the Attorney General.

[93] In cross-examination Dr. Lewis was asked, “Is that why you wanted a schedule of liabilities?” Dr. Lewis responded:- “Yes, this was my communication after consultation with the relevant authorities.” It should be noted that Dr. Lewis never said he took legal advice. The first observation

I make is that, Dr. Lewis is not a Lawyer. Even if I come to the conclusion that Dr. Lewis received advice from the Attorney General, it does not mean that the advice was legally correct.

[94] I think it is necessary to settle the issue raised on behalf of the Claimant notwithstanding that I have determined that there was no contract between the parties.

[95] Mrs. Jemmotte-Rodney contends on behalf of the Defendants that neither Dr. Lewis, Chief Minister nor Mrs. Roselyn Cassell-Sealy, Acting Chief Minister had the authority or ostensible authority to act on behalf of the government of Montserrat. She argues that the onus lies on the Claimant to prove either real or ostensible authority, see Robert Pio Baird v Clancy Mark³ .

[96] Mrs. Jemmotte-Rodney in an attempt to bolster her position that neither the Chief Minister nor the Acting Chief Minister had authority to enter into an agreement on behalf of the government, refers to the Financial (Administration) Act⁴. and argues that Mrs. Roselyn Cassell-Sealy would have had no capacity to contract on behalf of the government of Montserrat. The Financial legislation makes it clear that the responsibility lies with the Governor in Council (Now Cabinet).

[97] The short answer to this is, the Chief Minister or Acting Chief Minister is the head of the Cabinet; and any contract negotiated on behalf of the government by the Chief Minister or Acting Chief Minister, he or she will take it to the Cabinet for approval and if approved binds the government.

[98] Learned Counsel Mrs. Jemmotte-Rodney argues that there was no contract entered between the Claimant and the 1st Defendant for the provision of services to the value of £350,000.00 or any other sum, I agree.

[99] The Claimant is claiming the sum of £86,333.00 on a quantum meruit basis. The Claimant has issued invoices in that sum.

[100] The development of indebitatus assumpit in the seventeenth century led to cases where the court permitted the newer and better remedy to replace debt and account for such non-contractual claims e.g. to recover customary dues levied on foreign goods exposed for sale and, to recover customary fines due to the Plaintiff...., in some respect assumpit extended the scope of quasi,

³ Claim NO 2006/0638 Antigua and Barbuda

⁴ CAP 17 07 SS 3, 9 and 27

contractual remedies; it was allowed upon a quantum meruit to claim a reasonable re-numeration. Where the plaintiff had rendered services or supplied goods to the defendant at the latter's request but the parties had not fixed the sum to be paid; although it was obvious in the circumstances that neither party intended the services to be gratuitous, or the goods to be a gift see Chitty on Contracts⁵.

[101] The invoices were sent to the Chief Minister as a result of his requesting them from Mr. Ross Honey. In my view, this complicates the issue in this case. As by so doing, it seems to me that Dr. Lewis was recognizing that there was a contract between the government of Montserrat and International Pairs Ltd. As I observed above, Dr. Lewis is not a Lawyer.

[102] The email of the 27th of August 2008 at 10:57 which the Claimant says was an acceptance of the offer, I disagree. In this email she says, "I will sometime today be able to tell you how much the amount would be."

[103] On the same day Mrs. Roselyn Cassell-Sealy sends Mr. Ross Honey two (2) emails, one at 16:20 and the other at 16:25. No prudent businessman in my view, would, after receiving those emails go on to supply goods and services to the Defendants because Mr. Ross Honey on behalf of the Claimant was proposing £350,000.00 for phase 1 of the project, whereas the defendants were responding to something totally different. "the amounts that could be spent is between \$275,000.00 and \$500,000.00 over this period," that is a one year period.

[104] Mrs. Jemmotte-Rodney in her written submissions argues:

"The email communications and the evidence before the court reveals (sic) [reveal] that prior to the 10:57 email from Mrs. Roselyn Cassell-Sealy of 27th August 2008 which they said was an acceptance of their offer, the Claimants had started to work on arrangements and had already incurred expenditure. In the email communications from William Bramble to Roselyn Cassell-Sealy on 28th August, 2008 at 18:32, the Claimants indicated that at that time they had already expended in excess of £30,000.00 (approximately EC\$150,000.00).

⁵ 27 Edition at Paragraph 29-004

Mr. Honey indicated in his evidence that nothing was activated until he got the “go ahead”, but are the Claimants really asking the court to believe that having received the “green light”, the go ahead, at 10:57 on the 27th August 2008 that they, in little over 24 hours expended EC\$150,000.00? It is submitted that this could not be the case. The Claimant incurred expenditure at his own risk prior to receiving the email at 10:57 and it is submitted that no contract having been entered into with the 1st Defendant; the 1st Defendant would not be liable to the Claimant in relation to that sum.”

[105] I understand Learned Counsel to be saying that prior to Mr. Ross Honey receiving the e-mail on 27th August at 10:57 there could be no question of a contract being entered between the parties. I agree entirely with this submission.

[106] In my considered opinion, it cannot be said that the Defendants had requested those services.

[107] Moreover Mr. Ross Honey himself says these services had been undertaken on a good will basis. For completeness I look on the invoices sent to Dr. Lewis

Item No. 1

1. Cost paid to technical consultants £7,500.00, 28th August to 24th September.

Cost paid to legal counsel and consultant to International Pairs £9000.00 the period 28th August to 24th September 2008.

2. Cost of television to visit Montserrat and pre-production work £30,000.00. Editing of DVD and TV footage for International T.V. series and marketing campaign.

3. Flights of 4 TV crew on 10th September to Montserrat via Antigua £2,268.00.

[108] I ask the rhetoric question, why is the Claimant undertaking expenditure on behalf of the Defendants on 28th August 2008 and 10th September 2008 when it was beyond doubt that no contract was in force?

[109] Mr. Ross Honey admitted in evidence that airline tickets were cancelled (item 3 above). Item 2 above for £30,000.00, Learned Counsel Mrs. Jemmotte-Rodney has taken serious issue with it. She argues that Mr. Ross Honey failed to provide any evidence that the £30,000.00 cancellation fee to Pergall Media was ever claimed or was ever paid by the Claimant.

- [110] Mrs. Shree Jemmotte Rodney argues further that it cannot go without note that the document submitted by the Claimant to Dr. Lewis on 17th September 2008 which speaks to arrangements with Pergall Media differs from the one attached to the witness statement of Mr. Ross Honey filed on October 12th, 2011 in that, the one submitted on 17th October 2008 is not signed.
- [111] Whereas the one attached to the witness statement has a signature attached and is dated 27th August 2008. She contends, when under cross-examination about the difference, Mr. Honey was unable to provide satisfactory explanation for this difference. Mrs. Jemmotte-Rodney questions the authenticity of the document and contends that the £30,000.00 fee cancellation was never claimed by Pergall Media and or paid because there was in fact no contract between the Claimant and Pergall Media entered into on 27th August 2008.
- [112] Learned Counsel for the Defendants further argues that the Claimant has displayed invoices but provided no proof that the work reflected in the invoices was ever done. There were no receipts as proof of payment for the work. Mrs. Jemmotte-Rodney further contends that Mr. Honey admitted the writing of cheques but that does not mean that they were cashed or the funds were taken from his account. And he has failed to provide evidence that the cheques had been cashed.
- [113] Finally, Learned Counsel argues that the proof is on the Claimant that he incurred expenditure in the sum of £86,333.00 or any expenditure at all.
- [114] I agree with this submission of Learned Counsel. Moreover, as I have said above the Claimant is relying on the email of 27th August as establishing a contract between it and the Defendants; I have held that the e-mail could not be regarded as an acceptance of any offer.
- [115] In addition to the email of August 27th, 2008 at 16:25 about – 6 hours later shows quite clearly in my mind that the previous email could not be regarded as an acceptance of an offer. It is quite clear by the evidence that the Claimant had undertaken, work prior to the receipt of email of 27th August 2008 at 10:57pm. That work the Claimant described as “goodwill”.
- [116] In Mr. Ross Honey’s letter to Mrs. Roselyn Cassell-Sealy dated 11th August, 2008 he wrote:
- “In the interest of accomplishing the maximum benefit of the upcoming International World Final in Scotland and the arrival of government officials from Montserrat a lot of ground work is currently being undertaken on a good will basis by International Pairs”

[117] This was long before the email of 27th August 2008 at best. Indeed the Defendants did not request that work. The Defendants could not be held liable for such expenditure.

[118] For the reasons given above the Claim of the Claimant is hereby dismissed.

[119] Cost to the defendants on a Prescribed Cost basis.

A handwritten signature in black ink, appearing to read 'A. Redhead', written over a horizontal line.

ALBERT REDHEAD
HIGH COURT JUDGE