

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTSERRAT

CASE NO. MNIHCV2021/0025

BETWEEN:

[1] HON. ATTORNEY-GENERAL

Claimant

and

**[1] BERTRAND BURKE and
[2] JENNIFER BURKE
[3] Trading as JENNY TOURS**

Defendants

Appearances:

Ms. Renee Morgan for the Claimant

Dr. David Dorsett for the Defendants

2024: FEBRUARY 5

2024: APRIL 30

JUDGMENT

FITZPATRICK [AG.]:

THE COURT CONSIDERED THE FOLLOWING:

[1] The Claimant is the representative authorized to commence civil proceedings on behalf of the Government of Montserrat ("GOM").

[2] The Defendants are spouses of one another who together operated a business under the name Jenny Tours (collectively the "Burkes"). The Burkes entered a series of same terms contracts with GOM between January, 2018 and March, 2020 to provide ferry agent services, including the collection and remittance of passenger and cargo revenues

for transport from Antigua to Montserrat along with accounting for all fares and transactions for each trip (the “Contracts”).

[3] The Burkes were obligated pursuant to Clause 3 of the Contracts to satisfy the following responsibilities, among others:

- a. Organize the collection of payments in cash from all passengers and non-passengers transporting cargo using the ferry service;
- b. Ensure that proper accounting procedures are used for the recording of all monetary transactions in relation to the ferry service; and,
- c. Submit all revenue collected in relation to the ferry service to the Permanent Secretary or her designate the Access Coordinator on a weekly basis.

[4] The Burkes also agreed to indemnify the GOM for any losses at paragraph 18 of the Contract, which stated the following:

- a. The Agent shall indemnify the Government from and against any and all loss, damage or injury caused by the Agent in the course of conducting the Service and resulting from any negligent or wrongful act or omission of the Agent.

[5] The Claimant alleged that the Burkes breached their contractual obligations respecting the accounting for, collection and remittance of ferry revenues resulting in total losses to GOM of \$304,441.74 EC over the period from January, 2018 to March, 2020. This claimed loss was revised down to \$297,386.74 during closing submissions.

[6] The Burkes deny all allegations of contract breach and related losses to GOM.

The Trial Evidence

[7] The trial of this action was completed over two days. The Claimant called three witnesses. The Burkes both testified. All five witnesses adopted his/her witness statement as evidence in chief and were subject to cross-examination. I below review the material evidence from each side.

The Evidence for the Claimant

- [8] The Claimant's first witness was GOM Access Coordinator, Ashley Lindsey. Mr. Lindsey adopted the contents of his Witness Statement dated December 14, 2022.
- [9] Mr. Lindsey was responsible for the day to day management of overall ferry operations, including with respect to the Contracts with the Burkes.
- [10] Mr. Lindsey advised that the ferry service used an Electronic Booking System ("EBS") as the mechanism to account for passenger and cargo ferry transport. The EBS produced a passenger manifest and related record of sales. Mr. Lindsey confirmed that it was the responsibility of the Burkes to account for all passengers and cargo by entering all such information in the EBS. He testified to learning that the Burkes also made use of manual, handwritten manifest entries to account for passenger and cargo transport. His evidence was that the EBS should be used by ferry agents and if used there would be no need for handwritten entries.
- [11] Mr. Lindsey stated that he became aware of "discrepancies" with the EBS records following a communication from the Montserrat Customs Comptroller in February, 2020 inquiring about the arrival of ferry passengers who were not accounted for in the manifest. Mr. Lindsey reported this to GOM Permanent Secretary, Ms. Daphne Cassell, who requested that a rapid audit be undertaken.
- [12] Mr. Lindsey completed a three month audit of the Burkes ferry services for the period December, 2019 to February, 2020. The audit was undertaken based on documents created by the Burkes, including the EBS, manual manifest entries and bank slips for deposits of ferry revenue into the GOM account. He did not contact the Burkes in connection with this audit.
- [13] Mr. Lindsey testified that the purpose of the audit was to identify financial and administrative discrepancies. Mr. Lindsey's findings from this audit were captured in his Access Agent Stakeholder Report (Jenny Tours) dated February 21, 2020. Mr. Lindsey's testimony was that, based on this audit, he concluded the Burkes had failed to remit ferry service revenues owing to GOM. Mr. Lindsey submitted his Report to Ms. Cassell to review and then take whatever measures she deemed appropriate.

- [14] The second witness called by the Claimant was GOM Permanent Secretary, Daphne Cassell. Ms. Cassell adopted the contents of her Witness Statement dated December 13, 2022.
- [15] Ms. Cassell confirmed that Mr. Lindsey's Report and the discrepancies identified therein came to her attention in February, 2020. On February 26, 2020, Ms. Cassell wrote to the Burkes requesting their explanation regarding these discrepancies. In response, the Burkes remitted payment of \$11,360.00 EC.
- [16] Ms. Cassell contacted the Financial Secretary to recommended a more comprehensive audit of the ferry services provided by the Burkes. The Financial Secretary requested that the Internal Audit Unit ("IAU") undertake this comprehensive audit.
- [17] The IAU conducted an audit of the ferry services provided by the Burkes covering the period from January, 2018 through to March, 2020. The IAU issued an audit report dated October 27, 2020 identifying losses to GOM over that period of \$304,441.74 broken down as follows:
- a. Under deposits of \$126,208.58;
 - b. Unrecorded cargo revenue of \$33,503.16; and,
 - c. Unrecorded passenger revenue of \$156,090.00.
- [18] Ms. Cassell wrote to the Burkes by letter dated November 6, 2020 identifying the \$304,441.74 owing, including the tables from the IAU's Report detailing the monthly and annual revenues outstanding, and seeking payment.
- [19] Ms. Cassell's evidence was that Mr. Bertrand Burke telephoned her on November 30, 2020 to advise that he was working on a response to the November 6th letter noting that his records had been damaged by water.
- [20] Mr. Burke emailed Ms. Cassell on December 1, 2020 confirming their prior conversation, indicating an intended response by December 4th and referencing lost records "due to peculiar circumstances".

- [21] Ms. Cassell testified that no accounting information or any substantive response was received from the Burkes to the losses identified in her November 6th letter. She advised that the Burkes have not paid anything towards this claimed loss.
- [22] Ms. Cassell testified that the Access Coordinator, Mr. Lindsey would be the person in regular contact with the Burkes respecting daily ferry services not her.
- [23] The Claimant's final witness was Mary Romilly Murrain Daley. Ms. Daley adopted the contents of her Witness Statement dated October 25, 2022.
- [24] Ms. Daley is the chief internal auditor of the IAU. Ms. Daley was previously permitted to be called by the Claimant as an expert witness in this matter pursuant to Rule 32.6(1) of the Civil Procedure Rules by Court Order dated July 1, 2022.
- [25] Ms. Daley testified that the IAU was contacted by the Financial Secretary on March 16, 2020 with a request to investigate and identify any loss of revenue from the ferry services provided by the Burkes.
- [26] The IAU undertook a comprehensive audit of the ferry services provided by the Burkes from January, 2018 through to March, 2020. On behalf of the IAU, Ms. Daly prepared an audit report dated October 27, 2020 appended to Ms. Daley's expert report dated July 19, 2022 (the "Expert Report").
- [27] Ms. Daley's evidence was that it was the responsibility of the ferry agent to account for all passengers and cargo by entering all such information in the EBS for each trip. Ms. Daley's evidence was that the ferry agent was required to complete a daily reconciliation of passengers, cargo and related revenue.
- [28] Ms. Daley's evidence was that the integrity of the EBS manifest was critical given that this was considered an official record that was provided to and relied upon by the Montserrat Port Authority and the Montserrat Customs and Immigration Department among others.
- [29] Ms. Daley's Expert Report identified ferry service revenue losses of \$304,441.74 to GOM from January, 2018 through to March, 2020 broken down as follows:
- a. Under deposits of \$126,208.58;

- b. Unrecorded cargo revenue of \$33,503.16; and,
- c. Unrecorded passenger revenue of \$156,090.00.

[30] Ms. Daley testified that she read Mr. Lindsey's Audit Report but that she did not rely on it. She stated that she prepared the Audit Report without influence from or involvement of the Financial Secretary, the Permanent Secretary, Ms. Cassell or any other person or entity.

[31] Ms. Daley went through the source documents and methodology used to determine the revenue losses for each of the under deposits, unrecorded cargo and unrecorded passengers. She stated that she completed her Report independently using multiple source documents, including the EBS records, GOM monthly account statements, Immigration documentation for all persons passengers entering Montserrat, Montserrat Port Authority cargo information and bank slips for the ferry service deposits into the GOM bank account along with monthly account statements. All of these support documents were filed in this trial.

[32] Ms. Daley confirmed that she did not contact the Burkes in connection with this audit relying instead on documents from multiple sources.

[33] Ms. Daley's evidence was that every passenger and cargo transported by the ferry service from January, 2018 through to March, 2020 should have paid the appropriate fare.

[34] Ms. Daley said that there was a "complimentary" fare policy at the early stages of the ferry service but that policy was cancelled around 2015 following a review. Her evidence was that when this system was in place "complimentary tickets" were issued to those given free fare. These complimentary tickets would be collected and retained as part of the required accounting process.

[35] Ms. Daley was asked to comment on the claim by the Burkes that they were repeatedly told by the Access Coordinator, Mr. Lindsey to provide free fares. Ms. Daley stated that any travel for reduced or no fare would need to be documented with both the Access Coordinator and the Burkes retaining copies for their respective records. Ms. Daley confirmed that no such documents were found during her audit. Ms. Daley confirmed

that the IAU audit addressed all fares issues, including any travel at reduced or complimentary rates.

[36] Ms. Daley confirmed that her calculation of the revenue losses owing by the Burkes accounted for any cargo that was transported with the fare being paid by the agent in Montserrat, Jemmotte Shipping.

[37] Ms. Daley reviewed and referenced the responsibilities owed by the Burkes set forth in the Contracts. Ms. Daley concluded that the Burkes failed to satisfy their obligations pursuant to the Contracts resulting in the revenue losses of \$304,441.74 to GOM identified in her Expert Report.

[38] Ms. Daley acknowledged that the IAU audit revealed “concerns” about the GOM management of the ferry service and, in particular, its dealings with the Burkes. In general terms, Ms. Daley testified that she detected weakness in monitoring compliance by the Burkes with the Contracts and in taking timely action to sanction and correct deficiencies. She did not present any particulars in that regard.

The Evidence for the Defendants

[39] Both Bertrand Burke and Jennifer Burke testified at this trial.

[40] As every other witness did, Mr. Burke adopted the contents of his Witness Statement dated December 20, 2022. This Statement is brief being a total of nine paragraphs.

[41] Mr. Burke’s evidence was that he assisted his spouse with the operation of the ferry service and that all funds were remitted as required under the Contracts. He noted that he was a land surveyor by profession with related responsibilities that regularly absented him from the ferry service operations. Mr. Burke testified that his spouse handled the fare collections and deposits “most times”. He also said that it was his spouse who managed the manifests.

[42] Mr. Burke’s evidence was that Mr. Lindsey authorized both complimentary and reduced fare trips, including for school groups, sports teams and government representatives.

- [43] Mr. Burke specifically noted that much of the cargo transported was done with the understanding that payment would be made by the agent in Montserrat, Jemmotte Shipping.
- [44] Mr. Burke complained of “unfair” treatment on the basis of not being contacted or otherwise having any input in the IAU audit.
- [45] Mr. Burke also noted that much of the Jenny Tours business records were lost. Despite this, Mr. Burke testified that all information and documentation was assembled in a report provided in response to Ms. Cassell’s letter. Neither that report nor any related documentation were produced for this trial.
- [46] Mr. Burke also relies upon his letter of July 23, 2021 to the Governor of Montserrat and several other government representatives making similar complaints of unfair treatment. Mr. Burkes’ letter also suggests that the IAU audit is a campaign instigated by the Permanent Secretary, Ms. Cassell to punish the Burkes in retribution for Jenny Tours securing the ferry service contract that Ms. Cassell’s relatives bid on but did not receive.
- [47] Mrs. Burke also adopted the contents of her five paragraph Witness Statement dated December 20, 2022.
- [48] Mrs. Burke’s evidence was that all funds were remitted as required under the Contracts.
- [49] Mrs. Burke echoes her husband’s complaint of unfair treatment having not participated in the IAU audit.
- [50] Mrs. Burke’s evidence was that Mr. Lindsey, from time to time, instructed the Burkes to allow certain passengers such as Montserrat sports teams and those engaged in government business to have reduced fare transport.
- [51] Mrs. Burke specifically noted that much of the cargo transported was done with the understanding that payment would be made by the agent in Montserrat, Jemmotte Shipping.
- [52] Mrs. Burke also noted that much of the Jenny Tours business records were lost.

- [53] Mrs. Burke acknowledged that she was the person mainly responsible for the collection and deposit of fares from the ferry service operation.
- [54] Mrs. Burke agreed that there was no complimentary fares during the period under review but stated that “we were told on occasions to reduce fares for certain passengers”.
- [55] Mrs. Burke acknowledged that she was aware that the computerized EBS records were maintained and available from the EBS system and authorities that were provided copies of these records such as the Montserrat Port Authority as well as the Departments of Immigration and Customs.
- [56] Mrs. Burke was also unable to produce any documentation or information in response to the claimed revenue losses by GOM. She simply noted that everything had been reported to Mr. Lindsey.

Analysis

- [57] The Defendants, through counsel at the start of trial, conceded the Contracts and their related obligations owed to GOM for the accounting for, collection and remittance of ferry revenues. Consistent with this concession, the evidence of the Burkes was that their “relationship with the Government of Montserrat was governed by a contract”.
- [58] The losses claimed as owed to GOM were revised by counsel in her closing submissions. Ms. Daley’s Expert Report and related evidence identified ferry service revenue losses of \$304,441.74 to GOM from January, 2018 through to March, 2020, including unrecorded passenger revenue losses of \$156,090.00. Counsel revised the number claimed for unrecorded passenger revenue losses down to \$137,675.00 for an amended total claim of \$297,386.74.
- [59] Counsel explained the correction arose from a post-trial physical count of the Immigration forms completed by all passengers when entering Montserrat. This recount produced a lower number of unrecorded passengers and correspondingly reduced loss.
- [60] I do note that this revised loss number of \$137,675.00 for unrecorded passenger revenue was correctly stated along with the individual names and dates of travel for each unrecorded person in the 125 page documented response of the Attorney-General, Mrs.

Sheree Jemmotte-Rodney dated November 23, 2021 to the written request for further information made by the Burke's counsel on October 26, 2021. The Attorney-General's November 23, 2021 response was comprised of tables and reconciliations prepared by the IAU, which was filed as part of the documentation bundle for this trial. In other words, the correct calculation of losses arising from unrecorded passengers with all supporting documentation has been in the possession of the Burkes since November 23, 2021 and was before this Court as evidence available for consideration during this trial.

[61] The Burkes, both prior to and again at this trial, were provided with all of the supporting documentation relied upon by Ms. Daley for her audit and Expert Report. The Burkes did not produce any records or documentation of any kind to respond to these documents or the losses claimed by GOM save and only excepting the July 23, 2021 letter of Bertrand Burke to the Governor of Montserrat. Mr. Burke's letter did not have any records or other documentation attached in support of the various allegations contained therein.

[62] The Defendants did not file any documentation or other evidence during this trial to challenge the methodology or the findings of Ms. Daley detailed in her Expert Report. Similarly, there was no challenge to Ms. Daley's methodology or her findings made by counsel for the Burkes in closing submissions, including to the revised figure for the unrecorded passenger revenue losses claimed.

[63] The Burkes did complain of not being contacted or otherwise having the opportunity to participate in the audit process. Ms. Daley's evidence was that it is not unusual to conduct a financial audit without the input of the subjects of the investigation, as here. Ms. Daley was clear that she was able to conduct her investigation using multiple sources of documentation and information without need to contact the Burkes. Ms. Daley was certain that this documentation and information provided her with data she needed to accurately determine the losses outlined in her Expert Report.

[64] The Burkes did not provide any evidence, caselaw or other reference to suggest that the methodology and findings in the Expert Report were invalid arising from the failure to receive their input or to otherwise include them in the investigation. It is instructive that the Burkes have not produced any documents or specifics of any kind in response to Ms. Daley's findings despite being aware of them since November, 2020 when Ms.

Cassell sent correspondence seeking a response or following receipt of the 125 page documented response of the Attorney-General, Mrs. Sheree Jemmotte-Rodney dated November 23, 2021.

- [65] The only other specific challenge made by the Burkes to the losses identified in Ms. Daley's Expert Report was their allegation that cargo was regularly transported without charging any fare on the basis that these charges would be paid by the agent in Montserrat when the cargo arrived. As noted, Ms. Daley testified that her calculation of the revenue losses owing by the Burkes accounted for any cargo that was transported with the fare being owed/paid by the agent in Montserrat, Jemmotte Shipping. This evidence was not challenged.
- [66] To recap, the only response received to the losses claimed by GOM to date was the July 23, 2021 letter of Bertrand Burke to the Governor with the allegations expressed therein. This letter was not then or ever supported with any evidence beyond the Burkes repetition of those allegations during the trial of this matter. Allegations remain nothing more than that unless supporting evidence is presented and then accepted as fact(s) by the Court. The Burkes failed to present any supporting evidence with the result that the Court was left with nothing more than their unsubstantiated allegations mostly suggesting that the IAU audit was motivated by bias on the part of Ms. Cassell.
- [67] There was no meaningful evidence of any bias with respect to Ms. Cassell. Ms. Cassell, in her role as Permanent Secretary, was presented with the initial concerns by Mr. Lindsey about manifests understating the number of actual passengers arriving on the ferry. Ms. Cassell directed Mr. Lindsey to conduct a rapid audit to investigate these concerns. Based on his audit, Mr. Lindsey concluded that the Burkes had failed to remit ferry service revenues owing to GOM.
- [68] Ms. Cassell wrote to the Burkes to advise of the rapid audit results. The Burkes responded by remitting further revenues of \$11,360.00 EC. Ms. Cassell next contacted the Financial Secretary to recommended a more comprehensive audit of the ferry services provided by the Burkes. It was the Financial Secretary and not Ms. Cassell who made the decision to request that the IAU undertake a comprehensive audit. Ms. Daley testified that neither Ms. Cassell nor the Financial Secretary had any input,

involvement or influence in the IAU audit. The evidence was overwhelming that Ms. Cassell acted professionally, without bias or influence on the IAU audit.

- [69] Related to the above, Ms. Daley presented as an objective expert witness with unchallenged, sterling qualifications to provide her audit evidence. She answered all questions fully with due consideration. Ms. Daley was fair in her approach to the audit and related conclusions. For example, all calculations were done applying the lowest possible rate for cargo (i.e. \$1.00 per cubic foot) and passenger transport (i.e. a one way fare only). Ms. Daley's unchallenged evidence was that she completed the audit and her Expert Report relying on multiple sources for documentation and information to ensure impartiality and reliability. She did so without influence or bias.
- [70] Simply stated, Ms. Daley complied with her responsibilities as an expert pursuant to Rule 32 of the Civil Procedure Rules 2023. Her evidence was not meaningfully challenged and is accepted by this Court, including the revised number claimed for unrecorded passenger revenue of \$137,675.00.
- [71] The Defendants, in closing submissions, presented two arguments in support of their position that they did not breach any terms of the Contracts and are not liable for the losses of GOM.
- [72] The Defendants' "principal argument" is that all of their actions in providing the ferry services, including providing complimentary or reduced fare transports, were authorized by the Access Coordinator, Ashley Lindsey.
- [73] The first thing to note with this argument is that the Defendants did not ask Mr. Lindsey if he authorized the Burkes to provide complimentary or reduced fare transport. The Burkes took the position through the submissions of their counsel following the trial that they were not required to ask this question of Mr. Lindsey. The Burkes submit that they raised this issue at trial through Mr. Burke's July 23, 2021 letter and, as such, the burden was on the Claimant to disprove the allegation. I do not agree.
- [74] There is no doubt that the burden of proof will typically be upon the claimant in a civil case. A defendant has no burden of proof where simply denying the claim being made. In such circumstances, the burden remains exclusively upon the claimant to present evidence sufficient to prove her/his case as pleaded. That said, the burden can and

does shift depending on the issues being presented by the parties. It is well established that the legal burden of proof falls upon the party who affirmatively asserts any fact in issue and to whose claim or defence proof of that fact is essential (see: Murphy on Evidence 15th Edition. pg. 95).

[75] Here, it was the Burkes who have alleged Mr. Lindsey's authorization and whose defence depends on the proof of that fact. Having asserted in their defence that Mr. Lindsey authorized complimentary or reduced fare transport, the Burkes had the burden to prove Mr. Lindsey's authorization.

[76] The Burkes did not ask Mr. Lindsey if he provided the authorization they allege. The Burkes did not present any other evidence beyond each of them, in varying degrees, saying that he did. Bertrand Burke said that Mr. Lindsey authorized both complimentary and reduced fare trips. Jennifer Burke was clearly the one primarily engaged in the ferry service, including having responsibility for creating the manifests, fare collections and deposits, with some, limited assistance from Bertrand Burke. With this in mind, Jennifer Burke, contrary to her husband, denied that there were any complimentary trips authorized but alleged that Mr. Lindsey "on occasions" directed reduced rates be given for certain passengers. Between these two, one would presume Mrs. Burke to be more reliable given she was primarily present operating the ferry service not Mr. Burke.

[77] Even if the Burkes had been able to present some credible evidence that Mr. Lindsey "on occasions" authorized reduced fares, the Contracts obligated the Burkes to account for all transactions. In other words, they were obligated to memorialize, in writing, any and every authorization if received so that they could meet their contractual duty to account. They did not do so. Not once.

[78] Alternatively, the Defendants argue that GOM is estopped from seeking payment for any losses on the basis of its failure to properly supervise and otherwise manage the Defendant's ferry services. I reject these arguments for the following three reasons.

[79] The Burkes did not plead estoppel in their Statement of Defence. Counsel for the Burkes submits that estoppel did not need to be pleaded as it was an available argument based on the trial evidence. This would appear contrary to Rule 10.7 of the Civil Procedure Rules 2023 that provides:

Consequences of Not Setting Out Defence: The defendant may not rely on any allegation or factual argument which is not set out in the defence but which could have been set out there.

[80] I would reject the Burkes argument on the basis that they did not plead estoppel in their Statement of Defence contrary to the Rules.

[81] I would also reject the estoppel argument on the basis that it was not supported by the trial evidence. I do note that Ms. Daley offered her general observation that there was weakness in monitoring compliance by the Burkes with the Contracts and in taking timely action to sanction and correct deficiencies. That said, the specific, unchallenged evidence before me was that GOM responded appropriately and in a timely manner once alerted to the Burkes' misconduct.

[82] The Access Coordinator, Ashley Lindsey first became aware of an issue with the ferry services provided by the Burkes when he was told in December, 2019 about a passenger who had travelled without a ticket. Mr. Lindsey considered that a minor and isolated event. Mr. Lindsey stated that he subsequently became aware of "discrepancies" with the EBS records following a communication from the Montserrat Customs Comptroller in February, 2020 inquiring about the arrival of 9 ferry passengers who were not accounted for in the manifest.

[83] Mr. Lindsey reported the ferry service discrepancies without delay to his superior, Ms. Cassell, who immediately requested a rapid audit. Mr. Lindsey completed the rapid audit and presented his findings to Ms. Cassell in February, 2020. Ms. Cassell then wrote to the Burkes in February, 2020 about these concerns who responded by paying over \$11,360 in additional revenues. Ms. Cassell, without delay, brought these issues to the attention of the Financial Secretary who in March, 2020 requested the IAU to conduct a comprehensive audit. This comprehensive audit was completed by Ms. Daley and forms the basis for this action seeking repayment by the Burkes of all identified revenue losses.

[84] The specific evidence at trial was clear that GOM acted in a timely and progressive manner to address the concerns respecting the Burke's ferry services once alerted. There was no specific evidence before this Court of any meaningful delay or failure to act that would support an estoppel argument.

[85] I would also reject the estoppel argument based on the Contracts terms that the Burkes agreed defined their relationship with GOM. The Contracts (see: paragraph 23) contained the following waiver clause:

“The failure of either party to enforce its rights under this Agreement at any time for any period shall not be considered a waiver of such rights.”

[86] This clause provides that any delay or failure by GOM to enforce its rights when alerted to breaches of the Contracts by the Burkes does not result in GOM losing its rights or remedies. As such, this clause would negate any estoppel argument that might otherwise exist had there been evidence before this Court that GOM delayed or failed to act when aware of breaches by the Burkes.

Conclusion

[87] The Claimant has proven on the civil standard that the Defendants breached their obligations pursuant to the Contracts to account for, collect and remit ferry revenues resulting in total losses to GOM of \$297,386.74 EC over the period from January, 2018 to March, 2020. The Burkes agreed to indemnify GOM for all such losses and are otherwise liable for these losses arising from their breaches. There will be a judgment entered for this amount.

[88] The Claimant also seeks pre-judgment and post-judgment interest both at the rate of 4%. Pre-Judgment interest was sought in the Claimant’s Statement of Claim at the rate of 4% from “the deadline for payment, March 1, 2021 to the date of judgment”. The Claimant seeks post-judgment interest at the rate of 4% pursuant to section 7. of the *Judgments Act*. This relief was not challenged by the Defendants and is granted.

[89] The Claimant seeks its costs of this action in the amount of \$43,000.00 EC pursuant to Rule 65.5 of the Civil Procedure Rules 2023. The Claimant has been successful in obtaining judgment and is presumptively entitled to costs of this action. Neither the entitlement to nor quantum sought was challenged by the Defendants. The Defendants shall pay to the Claimant its costs fixed in the amount of \$43,000.00 EC, in addition to all other sums owing pursuant to this Judgment.

IT IS HEREBY ORDERED THAT:

1. The Defendants, Bertrand Burke and Jennifer Burke, jointly and severally shall pay to the Claimant, the Government of Montserrat damages of \$297,386.74 EC.
2. The Defendants, Bertrand Burke and Jennifer Burke, jointly and severally shall pay to the Claimant, the Government of Montserrat pre-judgment interest on the damages of \$297,386.74 EC at the rate of 4% per annum measured from March 1, 2021 to the date of this Judgment.
3. The Defendants, Bertrand Burke and Jennifer Burke, jointly and severally shall pay to the Claimant, the Government of Montserrat its costs of this action in the amount of \$43,000.00 EC.
4. The Defendants, Bertrand Burke and Jennifer Burke, jointly and severally shall pay to the Claimant, the Government of Montserrat post-judgment interest on the damages of \$297,386.74 EC and the costs of \$43,000.00 EC at the rate of 4% per annum measured from the date of this Judgment until the same shall be satisfied in full.

The Hon. Dale Fitzpatrick
(Ag) High Court Judge

By the Court

REGISTRAR

