

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVAP2018/0040

BETWEEN:

**[1] FAST KAZ AUTO SUPPLIES LIMITED
[2] CURTIS HUDSON
[3] BRYAN JAMES
[4] JAMES ENTERPRISES LIMITED**

Appellants

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Michael J. Fay, QC

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Horace Fraser for the Appellants
Mr. Rene Williams and Ms. Karen Bernard and Mr. Kurt Thomas for the
Respondent

2020: March 9;
June 12.

Civil Appeal —Statutory Interpretation —Section 94(1)(a) of Customs (Control and Management) Act — Reasonable grounds to believe goods liable to forfeiture concealed — Breach of statutory duty —Whether the Comptroller of Customs had power to authorise entry and search under section 94(1)(a) of Act without a warrant issued by the court — Separation of Powers —Section 7(2)(c) Constitution of Saint Lucia — Whether the exercise of powers by the Comptroller of Customs pursuant to section 94(1)(a) of the Act breached the separation of powers doctrine — Article 2124 of the Civil Code of Saint Lucia —Bad faith— Whether the Comptroller of Customs and by extension the customs officers exercised powers conferred by section 94(1)(a) of Act in bad faith

Fast Kaz Auto Supplies Limited (“Fast Kaz”) is a company which imports and sells vehicle spare parts, vehicle body shells and used vehicles. On 15th October 2009, customs officers from the Department of Customs and Excise, acting on the authorisation of the Comptroller of Customs and Excise (“the Comptroller”), searched Fast Kaz’s registered office, as well as the private residence of one of its the directors, Mr. Curtis Hudson. This was done with a view to seize and detain any goods that may have been liable to forfeiture. At Mr. Hudson’s private residence, the customs officers seized, removed and detained documents belonging to Mr. Hudson. At the registered office, the customs officers seized, removed and detained documents relating to the business and four vehicles.

James Enterprises Limited (“James Enterprises”) is a company which is in the business of importing used and reconditioned vehicles. On 14th October 2009, customs officers acting on the written authorisation of the Comptroller entered the private residence of Mr. Bryan James, a businessman and an associate of James Enterprises. This was done based on information received that, Mr. James and James Enterprises imported vehicles which were declared at values that were lower than the actual purchase price. The customs officers seized, removed and detained four vehicles and a number of documents and records relating to the business and Mr. James.

On 2nd November 2011, Fast Kaz and Mr. Hudson (“the Fast Kaz appellants”) filed a claim in the court below, claiming damages for trespass to property and goods, detainee, breach of statutory duty, interest and costs. On 11th June 2012, James Enterprises and Mr. James (“the James appellants”) also filed a claim in the court below, claiming damages for trespass, costs and interest. The learned judge noted that the claims filed by the Fast Kaz appellants and the James Enterprises appellants (collectively “the appellants”) were filed well beyond the 6-month period provided in Article 2124 of the **Civil Code of Saint Lucia** (the “Code”). This meant that the statutory limitation would apply unless the appellants could show that that the actions of the Comptroller, through his customs officers, were done in bad faith. On 28th October 2018, the learned judge delivered her judgment finding that the appellants failed to both specifically particularise the allegations of bad faith and to identify what statutory duty was breached by the Comptroller and, by extension, his officers. Accordingly, the learned judge found that the appellants’ cause of action was prescribed by Article 2124 of the **Code**, since they were filed more than 6 months after the cause of action arose. There was therefore no need to deal with the other issues raised in the respective claims.

Being dissatisfied with the decision of the learned judge, the appellants appealed to the Court of Appeal, challenging the learned judge’s reasoning and conclusion. The main issues that arise for determination by this Court are: (i) whether the Comptroller of Customs had power to authorise entry and search under section 94 of the **Customs (Control and Management) Act** (“the Act”) without a warrant issued by the court; (ii) whether the exercise of powers by the Comptroller of Customs pursuant to section 94 of the Act breached the separation of powers doctrine; and (iii) whether the Comptroller of Customs and, by extension, the customs officers exercised the powers conferred by section 94 of the Act in bad faith.

Held: dismissing the appeals in their entirety and ordering that each party shall bear their own costs, that:

1. Section 7(2)(c) of the **Constitution** enables Parliament to make laws which grant powers of search of premises or anything contained therein to administrative bodies for the purposes of revenue collection. Section 40 of the **Constitution** gives Parliament the power to legislate for the country. Cumulatively, these sections give Parliament the right to legislate for the collection and management of duties and revenue. This right has been crystallised in the enactment of the Act, as one of the pieces of legislation aimed at securing revenue and promoting an effective customs administration.

Section 7(2)(c) of the **Constitution of Saint Lucia** Cap. 1:01 of the Revised Laws of Saint Lucia 2017 applied; Sections 40 of the **Constitution of Saint Lucia** Cap. 1:01 of the Revised Laws of Saint Lucia 2017 applied;

2. The court should approach the interpretation of the legislation with a view to determine and give effect to Parliament's intention. It therefore follows that the Act must be examined having regard to the context, scheme and the purpose of the Act as a whole. An examination of section 94(1)(a) of the Act in this context shows, that the customs officer must first have reasonable grounds for believing that there are goods subject to forfeiture before approaching the Comptroller for authorisation to do any of the acts in sub-paragraphs (a) – (b). Section 94(2) of the Act exhibits Parliament's deliberate intention to create two parallel ways by which the powers of entry and search may be granted to customs officers to search premises which they believe are being used to harbour prohibited goods; the first is by the authorisation of the Comptroller in writing and the second, by a warrant issued by a magistrate upon being satisfied by information on oath that there are reasonable grounds for suspicion. There is no doubt that the learned judge correctly interpreted section 94(1)(a) of the Act and her decision cannot be impugned.

Sections 94 of the **Customs (Control and Management) Act** Cap. 15:05 of the Revised Laws of Saint Lucia 2017 applied; Sections 7(2)(c) of the **Constitution of Saint Lucia** Cap. 1:01 of the Revised Laws of Saint Lucia 2017 applied; **Attorney General v HRH Prince Ernest Augustus of Hanover** [1957] AC 436 applied.

3. The separation of powers doctrine serves to ensure that one arm of the government does not exercise power or control over another arm. By section 94(1)(a) of the Act Parliament merely provided an alternative method by which the Comptroller can authorise search and entry of a citizen's property. Indeed, section 94(1)(a) of the Act enables the Comptroller, to authorise in writing, a customs officer who has reasonable grounds of suspicion, to search for and seize uncustomed goods liable to forfeiture at the premises. The authorisation of the Comptroller to search and seize is not a judicial act in the same way, as there is no basis to assert that there is a breach of separation of powers as a

consequence. It is merely a holding measure. Accordingly, there was no breach of the separations of powers doctrine by the Comptroller. It is clear, that the learned judge correctly interpreted section 94(1)(a) of the Act.

Sections 7(2)(c) of the **Constitution of Saint Lucia** Cap. 1:01 of the Revised Laws of Saint Lucia 2017 applied; **Hinds v R** [1977] AC 195 applied; **James Bristol v The Commissioner of Police** GDAHCVAP1997/0016 (delivered 23rd February 1998, unreported) considered; **Jitendra Chawla AKA Jack Charles v Attorney General of Belize** Action No. 208 of 2002 considered; **Re Assets Recovery Agency (Ex-parte) (Jamaica)** [2015] UKPC 1 applied.

4. In determining whether an act amounts to bad faith, the court may examine not only the conduct at the time of the act but those actions before and after. The learned judge having examined the conduct of the customs officers, found that they were acting under the authority of a document in writing issued by the Comptroller, who is authorised to do so. A review of the evidence clearly indicates that it was open to the judge to make that finding. As such, the officers' actions could not have constituted bad faith. The judge's decision in this regard cannot be impugned. Insofar as the claims were brought well beyond the 6-month period as stipulated by Article 2124 of the **Code**, and the appellants failed to particularise the alleged acts of bad faith and to adduce evidence to substantiate their bare allegations of bad faith on the part of the customs officers, the claims were prescribed. The learned judge did not err in so holding that they were prescribed.

Article 2066 of the **Civil Code of Saint Lucia** Cap. 4:01 of the Revised Laws of Saint Lucia 2017 applied; **Marcano v Attorney General** TT 1985 HC 63 applied; **Jewel Thornhill v The Attorney General** SLUHCVAP2012/0035 (delivered 16th April 2015, unreported) applied.

JUDGMENT

Introduction

- [1] **BLNMAN JA:** This is a consolidated appeal by Fast Kaz Auto Supplies Limited, Mr. Curtis Hudson, Mr. Bryan James and James Enterprises Limited, against the judgment of the learned Cenac-Phulgence J dated 29th October 2018, in which she dismissed their claims against the Attorney General for damages for trespass to property and goods, damages for detinue (in the case of Mr. Curtis Hudson and Fast Kaz Auto Supplies Limited) costs and interests on the basis that the document issued by the Comptroller of Customs ("the Comptroller") to search the

premises of the appellants was illegal as the Comptroller had no legal authority to issue same.

- [2] I will now provide a synopsis of the factual background in order to place the appeal in context.

Background

- [3] Mr. Curtis Hudson ("Mr. Hudson") is a businessman and director of Fast Kaz Auto Supplies Limited ("Fast Kaz"), a company duly incorporated under the laws of Saint Lucia with its registered office at Beanfield, St. Jude's Highway in the quarter of Vieux Fort. Fast Kaz is in the business of importing and selling vehicle spare parts, vehicle body shells and used vehicles. Mr. Hudson and his wife are also the owners of private property located at La Ressource, Vieux Fort.
- [4] On 15th October 2009, a team of Customs Officers ("the customs officers") from the Department of Customs and Excise ("the Customs Department"), acting on the authorisation of the Comptroller of Customs and Excise ("the Comptroller"), searched the private residence and business premises of Mr. Hudson and Fast Kaz respectively, with a view to seize and detain any goods that may be liable to forfeiture. At his private residence, the customs officers seized, removed and detained documents belonging to Mr. Hudson. At the business premises, the customs officers seized, removed and detained documents relating to the business and four vehicles.¹
- [5] Mr. Bryan James ("Mr. James") is a businessman and an associate of James Enterprises Limited ("James Enterprises"), a company which is in the business of importing used and reconditioned vehicles. James Enterprises is conducted from four business locations situated at Vieux Fort, Soufriere, John Compton Highway and Mary Ann Street. Mr. James is also the owner of private property in Choiseul.

¹ For convenience, both the private residences and business premises of the appellants are referred to as "the premises".

- [6] On 14th October 2009, customs officers entered the premises of Mr. James acting on the authority in writing from the Comptroller and based on information that Mr. James and James Enterprises imported vehicles which were declared at values that were lower than the actual purchase price. The customs officers seized, removed and detained four vehicles and a number of documents and records relating to the business and Mr. James.
- [7] Mr. Hudson and Fast Kaz (“the Fast Kaz appellants”) and Mr. James and James Enterprises (“the James appellants”) (collectively, “the appellants”) all alleged that the customs officers acted in bad faith which resulted in loss to them. They further alleged that the documents issued by the Comptroller authorising the customs officers to search, seize and detain were illegal. The Fast Kaz appellants filed a claim on 2nd November 2011 claiming damages for trespass to property and goods, detainee, breach of statutory duty, interest and costs. The James appellants filed their claim on 11th June 2012 claiming damages for trespass, costs and interest.
- [8] The respondent, who was the defendant in the court below, vigorously defended the claims against them. They contended that based on their investigations, the customs officers had reasonable grounds to believe or suspect that the Fast Kaz appellants were engaged in disassembling vehicles in Japan and then reassembling them in Saint Lucia to avoid paying more in custom duties. The respondent also contended that the Comptroller was authorised to issue the document which gave the customs officers authority to search the appellants’ respective properties by virtue of section 94(1)(a) of the **Customs (Control and Management) Act** (“the Customs Act or the Act”).²
- [9] In relation to the James appellants, the respondent argued that the claims were prescribed by virtue of Articles 2122 and 2124 of the **Civil Code of Saint Lucia**

² Cap. 15.05 of the Revised Laws of Saint Lucia 2017.

(“the Code”),³ the latter providing that actions against public officers in respect of acts done by them in good faith and in the course of their public duties are prescribed by 6 months.

Issues in the lower court

- [10] The learned judge stated that the issues to be determined were: (i) whether the claims were prescribed; (ii) if not then, whether the entry of the customs officers on the appellants’ properties and seizure and detention of goods was lawful and the Comptroller had reasonable grounds to seize and/or detain the appellants’ respective properties; (iii) whether the Comptroller breached any statutory duty; and (iv) whether the appellants were entitled to damages and if so, what the measure of damages should be.

Judgment of the court below

- [11] The learned judge noted that the claims were filed well beyond the 6-month period provided in Article 2124 of the **Code** so that the statutory limitation would apply unless the appellants could show that there was an absence of good faith. Accordingly, the substantial issue before the judge was whether the appellants had established that the actions of the Comptroller, through his customs officers, were done in bad faith so as to give life to the claims.
- [12] Cenac-Phulgence J, in a very detailed and well-analysed judgment, addressed each of the appellants’ allegations of bad faith along with the relevant authorities. She noted that the appellants sought to raise a preliminary point on the constitutionality of section 94(1)(a) of the Act on the basis that it breached the separation of powers doctrine at the trial. She admonished this attempt stating that this should have been done on the pleadings so as to allow the respondent to know the case it had to answer. Furthermore, being that this was a private law claim, they could not seek to invoke the court’s inherent power as the guardian of the **Constitution** in the manner in which they did.

³ Cap. 4.01 of the Revised Laws of Saint Lucia 2017.

[13] The learned judge found that the appellants failed to not only specifically particularise the allegations of bad faith but also to identify what statutory duty was breached by the Comptroller and by extension, his officers. Accordingly, they failed to establish the absence of good faith. Of particular relevance are the learned judge's findings at paragraphs 31 – 33, 36 and 39 which state as follows:

“[31] In each case, the Customs officers acted on the authority of the “writ” issued pursuant to section 94(1) of the Act under the hand of the Comptroller.

[32] Therefore, the law clothes and gives legality to the actions of the Comptroller and if he acts pursuant to that law, it cannot be that he is acting in bad faith. The evidence shows that the Comptroller issued what is referred to as a “writ” pursuant to his powers under section 94 on the basis that there were reasonable grounds to believe that there were things liable to forfeiture at the premises of the claimants. The section requires that there be reasonable grounds for believing, authorisation from the Comptroller to undertake the actions stated in the section, and that such authorisation be in writing. There is no prescribed form that the authorisation should take which seemed to have given rise to the genesis of the document termed “writ”.

[33] The presumption of constitutionality applies and it is not appropriate for the claimants to have raised a challenge to the constitutionality of section 94 in the manner which they did. There were no pleadings in relation to this point. The issue was not raised at pre-trial review which could have afforded the claimants an opportunity to address the matter in the appropriate manner. The whole point of the **Civil Procedure Rules 2000** (“CPR 2000”) is to ensure that parties are well aware of the claims to which they must answer.”

[14] Also, the judge at paragraphs 36 and 39 stated:

“[36] Even assuming that section 94 were found to be unconstitutional, that still does not amount to bad faith as at the material time the officers and the Comptroller would have acted pursuant to a section which is presumed to be good law, it having not been declared otherwise by the court. It is interesting to note that section 94(2) also appears to make provision for the issue of a warrant by a Magistrate to search any building or place named in the warrant. That provision commences, notwithstanding the

provisions of subsection (1) which suggests that the procedure in subsection (1) is not subject to that in subsection (2).

...

[39] Whilst I agree with Mr. Fraser that the High Court has a duty to uphold the Constitution at all times and has jurisdiction to hear and determine questions regarding the interpretation of the Constitution, I do not subscribe to the view that this would apply in this case where the claimants are alleging that a section of the **Customs Act** is ultra vires the Constitution and the principle of separation of powers. That would have to be the subject of specific pleadings. On the other hand, the question whether the actions of the Comptroller pursuant to section 94 of the **Customs Act** infringed the claimants' right to the private property could certainly be a question which the High Court can entertain as it touches and concerns the infringement of one of the claimant's fundamental rights."

[15] The learned judge therefore found that the appellants' cause of action was prescribed by Article 2124 of the **Code** since they were filed more than 6 months after the cause of action arose. There was therefore no need to deal with the other issues, the learned judge reasoned.

Condensed issues on appeal

[16] The appellants, being dissatisfied with the decision of the learned judge, have filed four grounds of appeal challenging the learned judge's reasoning and conclusion. The grounds of the appeal can be helpfully crystallised into three main issues, namely:

- (i) Whether the Comptroller of Customs had power to authorise entry and search under section 94(1)(a) of the Act without a warrant issued by the court;
- (ii) Whether the exercise of powers by the Comptroller of Customs pursuant to section 94(1)(a) of the Act breached the separation of powers doctrine; and

- (iii) Whether the Comptroller of Customs and, by extension, the customs officers exercised the powers conferred by section 94(1)(a) of the Act in bad faith.

The appellants' submissions

- [17] Learned counsel, Mr. Horace Fraser, contended that the learned judge erred in her analysis of the law by failing to observe the principles of stare decisis in her interpretation of section 94(1)(a) of the Act and by failing to follow the Court of Appeal's ruling in **James Bristol v The Commissioner of Police**.⁴ To buttress this argument, he submitted that: (i) two functionaries cannot perform the same function; (ii) the Court, as guardian of the Constitution, cannot adopt a construction of section 94(1)(a) which conflicts with the Constitution; and (iii) it is a general principle of law that a member of the executive branch of Government cannot exercise judicial power. He further argued that the learned judge was bound by the principles of stare decisis to follow the rulings of the Court of Appeal on the subject matter in the cases of **Kanda v the Government of Malaya**,⁵ **James Bristol** and **Jitendra Chawla AKA Jack Charles v Attorney General of Belize**.⁶ Mr. Fraser submitted that on a strict interpretation of section 94(1)(a), a customs officer who has grounds for suspecting goods were liable for forfeiture, must first seek permission from the Comptroller. After getting permission, the officer must then approach a magistrate for a warrant to search the property where said goods are. He noted that the section makes mention of "permission" which he contended cannot be equated to the issuance of a "writ" or "warrant".
- [18] Mr. Fraser emphasised that the learned judge "erred in law when she treated the raising of a constitutional point in the course of the trial...as a constitutional challenge to section 94(1)(a) of the Act for a declaration of unconstitutionality therein.". He explained that his submission was not that section 94(1)(a) should be struck down but that to interpret the section to read that the Comptroller can

⁴ GDAHCVP1997/0016 (delivered 23rd February 1998, unreported).

⁵ [1962] UKPC 10.

⁶ Action No. 208 of 2002.

exercise judicial powers would be contrary to the **Constitution of Saint Lucia**⁷ (“Constitution”).

- [19] Mr. Fraser submitted that the learned judge erred in her treatment of the evidence and the law on bad faith and therefore this Court ought to set aside her decision. He posited that bad faith is not limited to malice but extends to recklessness, serious or extreme carelessness and abuse of power. He developed this point further by arguing that abuse of power can be equated to bad faith and that the latter included frustrating the purpose of a statute and unjustified actions which affect individual rights. He purported to rely on the cases of **Finney v Barreau du Québec**⁸ and **Roncarelli v Duplessis**⁹ in support of this argument. He urged this court to allow the appeal and set aside the judgment of the learned judge in its entirety.

The respondent’s submissions

- [20] Learned Senior Crown Counsel Ms. Karen Bernard, submitted that on a clear and plain construction of section 94(1)(a) of the Act, the Comptroller was empowered to authorise entry on to the premises of the appellants to search and that neither a court order nor warrant was required. She submitted that the actions of the Comptroller were clearly enabled by the express provisions of section 94(1)(a) of the Act and further by section 6(6) of the **Constitution**. Ms. Bernard submitted that the words “without prejudice” in section 94(2) of the Act meant that the powers conferred on the Comptroller in section 94(1)(a) or anywhere else in the Act were unaffected by the provisions in 94(2). Accordingly, she argued, the learned judge was correct in concluding that the procedure of obtaining a warrant from a magistrate was not an exclusive one for authorisation under the Act.
- [21] Ms. Bernard submitted that the authorities which the appellants have relied on are of no assistance, particularly on the principle of stare decisis since the authorities

⁷ Cap 1.01 of the Revised Laws of Saint Lucia 2017.

⁸ [2004] 2 SCR 17, 2004 SCC 36 (Canlii).

⁹ [1959] SCR 121.

addressed the constitutionality of particular provisions. The appellants' case, she asserted, was primarily on the proper interpretation to be given to section 94(1)(a) of the Act, yet no authority in support has been provided. She relied on the principle enunciated in **Macadeen Ameerally and Aubrey Bentham v Attorney General, Director of Public Prosecutions and Magistrate, Prem Persaud**¹⁰ in support of the point that not only should an alleged violation of the Constitution be specifically pleaded, but there must be specific reference to the provision invoked and the facts which would establish a prima facie breach of the provision.

- [22] On the question of bad faith, Ms. Bernard submitted that the case of **Jewel Thornhill v The Attorney General**¹¹ was clear authority for the principle that proving bad faith requires an examination of the entire course of conduct of the persons who are alleged to have acted in bad faith. She argued that the particulars alleged by the appellants refer to alleged general infractions and nothing specific to the conduct of the officers involved. She reiterated the particularisation of bad faith and stated that there was nothing on the evidence to support a finding of bad faith. Ms. Bernard submitted that even if the court were to rely on the extended meaning of bad faith in **Finney**, there was simply nothing on the evidence to prove or even suggest that the officers acted with gross negligence or recklessness. At the invitation of this Court, Ms. Bernard sought to address the relevance of section 7(2)(c) of the **Constitution** to the present appeal during her oral arguments. She urged this court to hold that the learned judge did not err in her reasoning and conclusion and therefore to dismiss the appeal in its entirety and affirm the decision of the judge.

Discussion

- [23] I will now address the relevant constitutional and statutory provisions in order to provide the requisite context.

¹⁰ (1978) 25 WIR 272.

¹¹ SLUHCVP2012/0035 (delivered 16th April 2015, unreported).

Relevant constitutional and statutory framework
The Constitution

- [24] Section 6 of the **Constitution** (“Constitution”) provides for the protection from the deprivation of property, one the fundamental rights and freedoms afforded to persons. Section 6(6)(a) of the **Constitution** is relevant to the appeal at bar, and it provides as follows:

“(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1)—

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—

(i) in satisfaction of any tax, rate or due,

(ii) by way of penalty for breach of any law or forfeiture in consequence of breach of any law,

...

(vi) in consequence of any law with respect to the limitation of actions, or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;...”

- [25] Section 7 of the **Constitution** provides for the protection from arbitrary search or entry. Section 7, insofar as it is relevant to the appeal at bar, provides:

“7. Protection from arbitrary search or entry

(1) Except with his or her own consent, a person shall not be subjected to the search of his or her person or his or her property or the entry by others on his or her premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision —

...

- (c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or to that authority or body corporate, as the case may be; or

...

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.” (emphasis mine)

The Customs (Control and Management Act)

[26] Part 2 of the Act sets out the actions and operations necessary to carry out and fulfill the legislative intent and policy behind the Act. The general powers of the Comptroller are expressly provided for in section 4 of the Act which, insofar as it is relevant, reads:

“(1) There is hereby created the office of Comptroller which is a public office. The Comptroller, subject to the general control of the Minister, is charged with the duty of collecting and accounting for, and otherwise managing, the revenue of customs.

(2) The Comptroller is responsible for the administration of this Act and for any other enactment relating to any assigned matter.

...”

[27] For the purposes of carrying out his or her functions and duties of administration, section 5 of the Act, provides for the delegation and appointment by the Comptroller. It states:

“(1) Any act or thing required or authorised by any customs enactment to be done by the Comptroller may be done by any officer authorised generally or specifically in that behalf, in writing or otherwise, by the Comptroller, except that where, for any reason, the post of Comptroller for any time is unfilled, any authorisation given by a previous Comptroller

which has not been revoked shall continue in force until revoked by any person subsequently appointed as Comptroller.

(2) Any person appointed by the authority or with the concurrence of the Comptroller (whether previously or subsequently expressed) to perform any act or duty relating to an assigned matter which by law may or is required to be performed by an officer, is considered to be an officer.

(3) Any person considered by virtue of subsection (2) to be an officer has the powers of an officer in relation to the act or duty to be performed by him or her.

...

Of particular relevance is section 94 of the Act around which the main issues in the appeal revolved. Section 94 provides that:

“94. Power to search premises

(1) Where an officer has reasonable grounds to believe that anything which is liable to forfeiture by virtue of any customs enactment is kept at or concealed in any building or other place or any offence has been committed under or by virtue of any customs enactment he or she may after being authorised by the Comptroller in writing so to do—

(a) enter any building or place at any time, and search for, seize, detain or remove anything which appears to him or her may be liable to forfeiture; and

(b) so far as is reasonably necessary for the purpose of such entry, search, detention or removal, break open any door, window or container and force and remove any other impediment or obstruction; and

(c) search for and remove any invoice, bill of lading or any other document or book relating to any assigned matter.

(2) Without prejudice to the power conferred by subsection (1) or to any other

power conferred by this Act, if a magistrate is satisfied by information upon oath given by an officer that there are reasonable grounds to suspect as aforesaid, he or she may by warrant under his or her hand given on any day authorise that officer or any other person named in the warrant to enter and search any building or place so named.

...

Issue 1

Whether the Comptroller of Customs had power to authorise entry and search under section 94(1)(a) of the Act without a warrant issued by the court.

Whether the exercise of powers by the Comptroller of Customs pursuant to section 94(1)(a) of the Act breached the separation of powers doctrine.

- [28] I now turn to address the above two issues that were distilled from the grounds of appeal. It is convenient to treat with the first two issues together since they are inextricably linked.
- [29] It is evident that the gravamen of this appeal examines the constitutionality of the exercise of the powers of the Comptroller and the proper interpretation to be given to section 94(1)(a) of the Act. Stripped of all its niceties, this appeal is primarily concerned with whether the Comptroller has the power to authorise the search of person's premises. In doing so the Court seeks to ascertain whether the Comptroller had power to authorise entry and search under the relevant section without a warrant issued by the court and whether the exercise of this power was a breach of the doctrine of separation of powers as enshrined in the **Constitution**.
- [30] Section 40 of the **Constitution**, confers on Parliament the power to make laws for the peace, order and good government of the nation of Saint Lucia, subject to its provisions. In keeping with this, it is within the exclusive purview of Parliament to enact laws for the purposes of collecting and securing revenue. The Act is one such statute, a result of Parliament's unlimited lawmaking power and which must be interpreted in light of section 7(2)(c) of the **Constitution**. The provision made in section 7(2)(c), for the purposes of this appeal, enables Parliament to make laws which grant powers of search of premises or anything contained therein to administrative bodies for the purposes of revenue collection. This appeal interrogates whether the relevant provision of the Act has been enacted pursuant to section 7(2)(c) of the **Constitution**. Of necessity, the interpretative role of the court is brought into focus.

[31] The role of the court in interpreting legislation is not to be concerned with its own view of the Act's purpose but instead the court should approach the interpretation of the Act with a view to determine and give effect to Parliament's intention. It follows then that in determining the first issue raised in this appeal, it is necessary to apply the principles relevant to statutory interpretation, which are well settled.

[32] I now turn specifically to examine section 94(1)(a) of the Act in order to ascertain its meaning. It is necessary therefore to examine the natural and ordinary meaning of the words used in the legislation having regard to the context, scheme and purpose of the Act as a whole. If the court considers that the words are ambiguous or that when construed in their ordinary sense would produce an absurd result which clearly runs afoul of the purpose of the statute, then it can enquire further in to the meaning of the statute by employing the other canons of statutory interpretation and intrinsic and extrinsic aids to interpretation. As I consider the proper interpretation to be accorded to section 94(1)(a) of the Act, I apply the helpful dicta of Viscount Simmonds in **Attorney General v HRH Prince Ernest Augustus of Hanover**¹² that:

“For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy.”

[33] Therefore the overall framework of the Act must be examined in order to determine whether or not the context supports the plain meaning of the words used in section 94(1)(a) with a view to ascertaining whether or not the Comptroller was empowered to authorise entry and search without a warrant issued by the court.

¹² [1957] 1 All ER 49 at 53.

[34] As stated earlier, section 4 of the Act vests the power to the Comptroller to conduct the general administration of the Act and any other law in relation to which he or she is required to perform any duty. A review of the legislation, particularly of the powers, reveals that Parliament acknowledged that these powers may be fairly regarded as necessary in order to assist the Comptroller to give effect to the customs legislations in accordance with its intent. These powers include delegation in writing or otherwise of any power, duty or functions whether generally or specifically, giving directions to promote the efficacy of the Act, requiring information and the production of evidence in the exercise of his or her duties and requiring the attendance of any master of a vessel or commander of an aircraft to answer questions. Section 8, in particular, imposes a duty on police officers to assist in the enforcement of customs laws and even went further to state that in relation to any assigned matters,¹³ every customs officer shall have the same powers, authorities and privileges that are given to police officers. It is against this backdrop that section 94(1)(a) should be considered since it is evident from a reading of the provisions of the Act that Parliament intended to grant the Comptroller the powers incidental to and consequential upon the effective execution of his or her duties as mandated in the Act.

[35] A close reading of section 94(2) of the Act reveals that the power which is conferred on the Comptroller is separate and apart from that of the magistrate. I have no doubt that Parliament, in its wisdom and as it is entirely within its remit to do, saw it fit to allow for an expedited method by which premises on which goods liable to forfeiture are kept can be searched. In my estimation, Parliament thought it fit to clothe the Comptroller with this authority where it considered that the Comptroller, in his or her capacity, was perfectly positioned to regulate and secure the collection and management of revenues in accordance with the laws of the state, protect its welfare and security, facilitate and enhance trade whilst ensuring compliance with all relevant customs laws. It is not difficult to ascertain the policy

¹³ The term 'assigned matter' is defined in section 2 as any matter in relation to which the Comptroller is required under any enactment to perform any duty.

reasons which undergird that provision. These are self-evident and need no extensive discourse. Suffice it to say, that if the customs officers had to obtain a warrant from a magistrate every time they had reasonable grounds to search the premises of a suspected offender, this would effectively grant the offender an extension of time within which to take the necessary steps to hide and whisk away goods reasonably suspected to be liable to forfeiture from the scrutiny of the law. This would severely impede an effective customs administration and undermine rather than enhance the efficacy of the Act. Put another way, the existence of this alternative authorising mechanism of search and entry is necessary in order to serve the objectives of the legislation. It enables the Comptroller to act with expedition, so as to ensure that uncustomed or prohibited goods are not concealed or kept away from the eyes of the law. There is no doubt that Parliament deliberately intended to confer this power on the Comptroller.

[36] I turn now to give a closer consideration to section 94(1)(a) of the Act in order to buttress the above view. I am of the clear view that based on an examination of section 94(1)(a), the customs officer must first have reasonable grounds for believing that there are goods subject to forfeiture by virtue of any customs law that are being kept at the premises before approaching the Comptroller for authorisation to do any of the acts in sub-paragraphs (a) – (b) of subsection (1). This authorisation empowers the customs officers to enter the building, search for, seize and detain or remove any goods which are liable to forfeiture; break or remove any barriers to entrance in the exercise of the aforementioned powers; and to search for and remove any invoice, bill of lading or other documentation relating to any assigned matter.

[37] Subsection (2) then goes on to state that notwithstanding the power conferred on the Comptroller and by extension his or her officers by virtue of subsection (1), if a magistrate is satisfied that there are reasonable grounds, he or she may issue a warrant authorising entry to and search of the premises.

[38] Section 94(1)(a) of the Act expressly grants the Comptroller special power to authorise the search of premises where uncustomed or prohibited goods are being kept by issuing a document in writing to the customs officers. I have no doubt, if Parliament wanted to, it would have been very simple to limit this power to Justices of the Peace, magistrates and other judicial officers. It is apparent therefore, on a clear construction of both subsections, that Parliament deliberately intended to create two parallel ways by which the powers of entry and search may be granted; the first is by the authorisation of the Comptroller in writing and the second, by a warrant issued by a magistrate upon being satisfied by information on oath that there are reasonable grounds for suspicion. It follows, that I am in full agreement with the decision of the learned judge that the procedure in subsection (1)(a) was not subject to that of subsection (2) and the Comptroller was empowered to issue the “writ”, as the appellants have termed it, to authorise search and entry.

[39] Upon a careful examination of the other powers conferred by the Act, particularly the powers to search vehicles, persons and to arrest, I am further fortified in my view that Parliament carefully designed and envisaged this parallel regime to achieve its objective. Section 95(1) of the Act grants, without prejudice to any other power in the Act, the power to stop and search vehicles provided that the custom officer has reasonable grounds to believe that the said vehicle has articles liable to forfeiture. Section 96(1) authorises a customs officer, who has reasonable grounds, to search a person who is in possession of anything liable to forfeiture. However, that person may request that he or she be taken before a magistrate, a senior of the officer or other relevant authority who will then determine whether or not the search ought to take place. By virtue of section 97, a customs officer may, upon reasonable grounds, arrest a person suspected of committing an offence under any customs laws and has the power to arrest any person who has in fact committed an offence for which the offender is liable to be arrested under the relevant laws.

[40] None of the above powers which directly touch and concern both property and person has a dual authorising scheme or procedure. This further reinforces my view that Parliament was deliberate in framing section 94(1)(a) of the Act to create parallel procedures by which customs officers could obtain permission to enter and search property. When the words of section 94(1)(a) are construed in the context of the legislative scheme, I am of the clear view that the Act gives the Comptroller the power to authorise search and entry by way of the “writ”. An interpretation of the section in the way Mr. Fraser has recommended would only facilitate exactly what the section and the entire scheme of the Act were designed to prevent – the whisking away of uncustomed and prohibited goods.

[41] Based on what I have foreshadowed, it is evident that the respondent’s arguments have fallen on fertile ground. The Act created a dual mechanism by which customs officers could obtain authority in writing from the Comptroller, to search premises which they have reasonable suspicion to believe are being used to harbour uncustomed or prohibited goods.

[42] The next question for the Court to fully address is whether section 94(1)(a) of the Act conflicts with the **Constitution**.

Issue 2

Constitutionality of section 94(1)(a) and Separation of Powers

[43] Before addressing this issue, it should be noteworthy that both counsels failed to address the Court on section 7(2)(c) of the **Constitution** which is critical to the resolution of the issues raised in this appeal. In my estimation this is unfortunate, as submissions, whether written or oral, should have been made on the applicability of this provision in addition to constitutional provisions, such as section 6(6)(a) of the **Constitution**, which concerns the protection from deprivation of property, as they have both contended.

[44] It must be underscored that Mr. Fraser reiterated that the appellants were not seeking to have the Court declare section 94(1)(a) of the Act unconstitutional but

were only raising the point that the judge's interpretation would constitute an executive interference with the exclusive province of the judiciary. I am of the firm view, that this argument is based on semantics, since to raise an argument about the breach of the separation of powers doctrine is to challenge the constitutionality of section 94(1)(a) of the Act. They are two sides of the same coin. Where a question is raised about whether or not there was a breach of the doctrine of separation of powers, the effect of this is to challenge the constitutionality of the Act or any provision(s) therein.

- [45] This brings into focus section 120 of the **Constitution** which provides that it is the supreme law of the land and any other law which is inconsistent shall, to the extent of the inconsistency, be void. As stated earlier, the **Constitution** gives Parliament the power to make laws. Notwithstanding the foregoing, the **Constitution** does not grant Parliament power to usurp the doctrine of separation of powers or to violate the provisions therein. Therefore, the court as the guardian of the **Constitution** has the duty to protect and enforce the rights given to citizens by the supreme law of the land - the Constitution. The doctrine of constitutional supremacy is well settled and needs no recitation. It is sufficed to say, that the doctrine has been underscored by Hyatali CJ, as he then was, in **Attorney General of Trinidad and Tobago v Ramesh Dipraj Kumar Motoo**¹⁴ who, quoting from **Black on 'The Construction and Interpretation of Laws'**¹⁵, stated:

"Legislators, as well as judges, are bound to obey and support the Constitution and it is to be understood that they have weighed the constitutional validity of every Act they pass. Hence the presumption is always in favour of the constitutionality of a statute, not against it; and the courts will not adjudge it invalid unless its violation of the Constitution is, in their judgment, clear, complete and unmistakeable."

- [46] For the value of emphasis, section 7(2)(c) of the **Constitution** explicitly states, for the purposes of this appeal, that where an officer or agent of the Government enters a person's property to inspect anything on the premises for the purposes of

¹⁴ (1976) 28 WIR 304 at 312.

¹⁵ (1911) p 110, para 41H.

any taxes or collecting revenue under the authority of an enabling legislation, there is no violation of the constitutional protection from arbitrary search or entry. Therefore, on the basis of the pellucid wording of section 7(2)(c), the constitutional right to be free from arbitrary search or entry is not absolute. In fact, the **Constitution** permits the state to limit citizens' rights, but they must be justified in so doing and only for legitimate purposes and to a necessary, proportional and reasonable extent. In addition to this, the **Constitution** empowers and grants Parliament the exclusive role of making laws to collect and secure revenue. Parliament, staying within the parameters of the **Constitution**, has enacted the Act and gave the general powers of administration therein to the Comptroller.

[47] One of the fundamental principles of constitutional jurisprudence is the doctrine of separation of powers. This separation of the three branches of government is a common feature of all the Constitutions of the Commonwealth Caribbean which are based on the Westminster model. Though the three branches of the state are all integral to the good governance and structure of the country and there may be some overlapping of functions between the executive and Parliament, a restriction is placed on each arm in the exercise of its constitutional powers so that it does not trespass on the authority of the other branches or allows for the concentration of power in one branch. This is in order to protect persons from arbitrariness and to uphold democracy. Ultimately it is to ensure that the rule of law is respected. In essence, the doctrine of separation of powers seeks to ensure that one arm of the government does not encroach on the functions and duties of the other arm. This is so in order to protect the people from arbitrariness and to uphold 'a characteristic feature of democracy'.¹⁶

[48] This salutary principle has been affirmed by a number of Privy Council decisions, the most notable being **Hinds v R**,¹⁷ which is regarded as locus classicus. Briefly, in that case, it was held that sentencing provisions of the Gun Court Act were

¹⁶ Per Lord Steyn, *Regina (Anderson) v Secretary of State for the Home Department* [2002] UKHL 46.

¹⁷ [1977] AC 195.

unconstitutional as they endowed judicial functions to a Board, the majority of whose members were not appointed in accordance with constitutional requirements for those exercising such functions. This was incompatible with the principle of separation of powers enshrined in the Constitution of Jamaica since the provisions transferred a sentencing power from the judiciary to a body which was not qualified under the Constitution of Jamaica to exercise these judicial powers. Lord Diplock, delivering the judgment of the Board, puts the principle this way

“... a great deal can be, and in drafting practice often is, left to necessary implication from the adoption in the new constitution of a governmental structure which makes provision for a legislature, an executive and judicature. It is taken for granted that the basic principle of separation of powers will apply to the exercise of their respective functions by these three organs of government. Thus the constitution does not normally contain any express prohibition upon the exercise of legislative powers by the executive or of judicial powers by either the executive or the legislature. As respects the judicature, particularly if it is intended that the previously existing courts shall continue to function, the constitution itself may even omit any express provision conferring judicial power upon the judicature. Nevertheless it is well established as a rule of construction applicable to constitutional instruments under which this governmental structure is adopted that the absence of express words to that effect does not prevent the legislative, the executive and the judicial powers of the new state being exercisable exclusively by the legislature, by the executive and by the judicature respectively.

...

All Constitutions on the Westminster model deal under separate Chapter headings with the legislature, the executive and the judicature. The Chapter dealing with the judicature invariably contains provisions dealing with the method of appointment and security of tenure of the members of the judiciary which are designed to assure to them a degree of independence from the other two branches of government What ... is implicit in the very structure of a Constitution on the Westminster model is that judicial power, however it be distributed from time to time between various courts, is to continue to be vested in persons appointed to hold judicial office in the manner and on the terms laid down in the Chapter dealing with the judicature, even though this is not expressly stated in the Constitution..”

The above salutary principles have been applied consistently in the courts in the Commonwealth Caribbean and have been affirmed by number of decisions by the Privy Council.

[49] In light of the foregoing and against the backdrop of Mr. Fraser's contention, the question for this Court's determination is whether there was a breach of the doctrine of separation of powers in circumstances where the Comptroller and, by extension, his or her officers were acting in accordance with the express provisions of section 94(1)(a) of the Act which was enabled by section 7(2)(c) of the **Constitution**. This amounts in effect to an interrogation into the constitutionality into the Comptroller's actions in authorising the search of the relevant premises.

[50] Let me say straightaway, the cases which the appellants have sought to rely on are unhelpful and the factual matrices which undergird them are markedly different from those in the present appeal. Unlike the cases cited by the appellants, the Comptroller was not carrying out any judicial functions; instead, he or she was empowered to authorise the entry to and search of premises, an administrative function. In **Jack Charles**, Conteh CJ was of the view that the Writ represented a prior authorisation which was indifferent to the presence or absence of belief that an offence against customs laws was committed. It was the absence of a reasonable provision either in section 87 or the Writ itself that took both the section and the Writ outside the parameters of section 9(2). Accordingly, the court held that pursuant to sections 9 and 14 of the Constitution, the applicant's rights were violated by agents of the Customs Department. Based on a close reading of the case, in my view, that the case was not simply about a member of the executive branch of government carrying out a judicial function, as the appellants have so confined it, but rather the case turned substantially on the complete absence of reasonable provisions for the derogation from the constitutional guarantee of protection from arbitrary search and entry.

[51] In **James Bristol**, the learned Byron CJ as he then was considered that the power to impound in section 130 of the Road Traffic Act ("RTA") meant to take possession of the vehicle. This, in his opinion, was compulsory and unlimited as it was not subject to any regulation and the power was not limited to circumstances

where there was a breach of law. Byron CJ rejected the argument that this section was saved by sections 6(6)(a)(ii) and (vii) of the Constitution and held that a penalty for breach of the law and forfeiture in consequence of a breach are judicial remedies, which are only enforceable by the court after said breach has been established. He further held that section 30 which permitted police officers to compulsorily take possession of property without compensation could not be saved by the constitutional provision excepting penalties and forfeiture. Accordingly, the Court held that the power to impound, and the actions which followed were an entirely separate and arbitrary power exercisable by the police, a branch of the executive, which violated the constitutional principle of the separation of powers. Essentially, the police were given powers to act as judge and jury. This clearly undermined the separation of powers doctrine.

[52] I do not consider it necessary to delve any further into these authorities which, in my judgment, are in contradistinction to the appeal at bar. By section 94(1)(a) of the Act, Parliament merely provided another method and an expedited process by which to authorize search and entry of a citizen's property and which fell squarely within the protection given by section 7(2)(c) of the **Constitution**. It created two separate regimes for the purposes of procuring a means of authorised search and entry; one where the Comptroller issues authorisation in writing and the second, where the officer swears on oath to a magistrate who issues a warrant. It is clear that the **Constitution** not only envisaged circumstances which would necessitate the grant of power or a delegation to a government body or agent to carry out a search of premises or articles for the purposes of revenue collection, but also the use of a "writ" under the Act as a law which authorises its issuance. There is nothing inherently wrong in so doing. For the avoidance of doubt, I must intimate, that section 94(1)(a) of the Act does not seek to usurp the exercise of judicial function from the courts. Upon a plain and ordinary reading of the section 94(1)(a) of the Act, it is clear that the Comptroller's powers are limited to the authorisation of the search and entry of premises. These powers do not extend to the determination of liability of persons, who may be in breach of the Act. This

determination is reserved for the judiciary; any judicial act that should follow thereafter must be done by the courts. Accordingly, there is no breach of the separations of powers doctrine by the Comptroller merely authorising the search and seizure of concealed uncustomed or prohibited goods.

- [53] Furthermore, the authorising power conferred on the Comptroller is not unfettered; it is circumscribed by the fact that he or she first had to be satisfied that there were reasonable grounds for believing that there was a breach of the Act which warranted search and entry. What is deemed to be 'reasonable grounds for belief' is difficult to express with any exactitude but case law has provided some guidance. Lord Hughes in the Privy Council decision of **Re Assets Recovery Agency (Ex-parte) (Jamaica)**¹⁸ made the following pronouncement at paragraph 19:

“Reasonable grounds for believing a primary fact, such as that the person under investigation has benefited from his criminal conduct, or has committed a money laundering offence, do not involve proving that he has done such a thing, whether to the criminal or civil standard of proof. The test is concerned not with proof but the existence of grounds (reasons) for believing (thinking) something, and with the reasonableness of those grounds...”

- [54] Essentially, the customs officer is required to demonstrate to the Comptroller that the subject matter is believed to exist and that there are objectively reasonable grounds for that belief. It does not necessitate establishing on a balance of probabilities that the subject matter in fact occurred or exists; the assent of belief is given on more slender evidence than proof.¹⁹ Bearing the above authoritative pronouncement in mind, I therefore approach the appeal at bar on the basis that the Comptroller, based on the express wording in section 94(1)(a), first had to be satisfied that there were reasonable grounds to believe that there were articles liable to forfeiture on the appellants' premises. Having been satisfied of this, he or she issues this authorisation in writing pursuant to the powers granted to him or her under section 94(1)(a).

¹⁸ [2015] UKPC 1.

¹⁹ *Mauge v The Attorney General and Others* HC2524/1997.

[55] I am fortified in my position that the learned judge correctly interpreted section 94(1)(a) of the Act. She was not simply adopting a construction that granted judicial power to an executive officer as Mr. Fraser argued. Instead, she was interpreting and applying a section of the Act which has not been declared unconstitutional by any court of law and which therefore remains good law. Furthermore, I cannot see how section 94(1)(a) of the Act, especially when read together with the general powers conferred by section 4 of the Act and in the context of the Act as a whole, on any interpretation, results in a usurpation or infringement by the executive of judicial powers.

[56] I return to the Privy Council decision of **Hinds v R** cited earlier. It is evident that the position in **Hinds** and the appeal at bar are totally different. The Board established under the Gun Court Act in **Hinds** was exercising a function which was reserved for the judiciary. In this instance, the Comptroller was merely acting in compliance with the powers conferred on him or her by a valid and constitutional legislation. The **Constitution**, by virtue of section 7(2)(c), enables it. I go further to say that the power endowed in section 94(1)(a) is only in relation to the search for uncustomed goods and prohibited articles; the Comptroller cannot impose charges for any offences committed, neither is the provision penal. In fact, section 119 of the Act stipulates that proceedings for an offence under any customs enactment may be only be commenced in three ways: (i) on the order of the Comptroller in writing and in the name of a customs officer; (ii) by the Director of Public Prosecutions in the exercise of its powers under section 73 of the **Constitution**; and (iii) by any court before which the arrested person is brought although proceedings were not instituted by order of the Comptroller or commenced in the name of an officer. All offences under the Act are to be prosecuted in the district court.²⁰

²⁰ See: Section 121 of the Customs (Management and Control) Act Cap. 15.05 of the Revised Laws of Saint Lucia 2017.

[57] In view of the totality of the circumstances, I am not in the least persuaded that the Comptroller carried out any judicial function when he or she authorised the search and seizure, as Mr. Fraser would have this Court believe. It therefore follows that there was no executive interference with the judiciary or a judicial procedure and the Comptroller was properly authorised to issue the document that he did.

[58] In my view it is clear that the learned judge cannot be faulted for her reasoning and conclusion on the powers of the Comptroller and by extension the constitutionality of his actions. It is evident from all that I have said that I am of the view that the appeal in relation to those two issues should be dismissed.

Section 6(6) of the Constitution

[59] Further, insofar as I have already found that the Comptroller's power of search and seizure is constitutional, I do not believe it is necessary to address section 6(6) of the **Constitution**.

[60] However, for the sake of completeness and out of deference to submissions of learned counsel, I will briefly address the third issue.

Issue 3

Whether the Comptroller of Customs and, by extension, the customs officers exercised the powers conferred by section 94(1)(a) of the Act in bad faith.

[61] I turn now to address the issue of bad faith. This is, in my view, a short point. A thorough review of the judgment indicates that the learned judge quite properly examined the pleadings, assessed the law and applied them to the factual matrix of the case. The learned judge considered that, on the pellucid wording of Article 2124 of the **Code**, actions against public officers in the course of their public duties are prescribed by 6 months unless bad faith can be established. Therefore, the central issue before the learned judge in the court below was whether the actions of the Comptroller through her officers were exercised or done in bad faith so as to enlarge the prescription period from six months to three years. This approach was correct and any criticism of the judge in this regard is unwarranted.

[62] It is imperative to state that Article 2066 of the **Code** provides that, “Good faith is always presumed. He or she who alleges bad faith must prove it.” This provision makes it clear that the onus rests on the party alleging bad faith to not only particularise the allegations of bad faith but to prove them. Collymore J in the Trinidadian case of **Marcano v Attorney General**²¹ observed that:

“The keystone upon which the exercise of all public functions rest, as all the authorities show is good faith. The existence of bad faith in the exercise of any administrative function is sufficient warrant for the court to say that that is an improper exercise and so is unlawful. (See *The Matter of L.J. Williams v. Percival Smith and the Attorney General* No. 176/78). The onus rests upon the applicant to show bad faith, and that in the absence of anything to the contrary, the Authority must be presumed to be acting properly.”

[63] In this Court, the appellants have repeated their bald assertions which have not been particularised and which they allege constitute bad faith. There is no need for an extensive recitation of these formulations. Suffice it to say that the appellants have grounded their case for bad faith in challenges to the Comptroller’s powers on the basis of lawful authority, violation of the Constitution and alleged recklessness of the actions. Also, the appellants’ case before the learned judge, was remarkable by their failure to lead any cogent evidence to substantiate their bare assertions.

[64] It is unwarranted for the appellants to complain against the learned judge’s treatment on issue of bad faith. Let me say straightaway that I do not find any merit in the argument for reasons that will become clear shortly.

[65] It is evident based on the fact that the learned judge found that the customs officers had reasonable suspicion that there was no issue of bad faith. Put succinctly, the appellants’ complaint in relation to bad faith is that the respondent has provided no evidence to prove the legality of the customs officers’ actions. Their contention is that the customs officers failed to establish the evidentiary bases for their suspicions that they were in contravention of the law. With respect to learned counsel, this

²¹ TT 1985 HC 63.

argument is unsustainable. The burden rested on the appellants to assert and prove bad faith. The customs officers were acting under the authority of a document in writing issued by the authorising personnel under a valid law. I therefore have no hesitation in agreeing with the learned judge's reasoning and conclusion that where the officer is under the genuine belief that he is empowered by law to take certain actions and he does so, these actions cannot constitute bad faith. The appellants' argument has completely ignored the fact that the customs officers were acting with all propriety in this instance under a lawful enactment. More critically it would be strange for the learned judge to have found that the appellants acted on the basis of reasonable suspicion while at the same time holding that they acted with bad faith, given the undergirding evidential circumstances.

[66] Nevertheless I am mindful of the fact that in determining whether an act amounts to bad faith, the court may examine not only the conduct at the time of the act but those actions before and after. The learned Chief Justice Pereira in **Jewel Thornhill v Attorney General** helpfully stated at paragraph 37 that:

"I accept however, as a general and common sense proposition that in determining bad faith one should look at the entire course of conduct as a continuum, as bad faith is usually to be inferred from a certain state of things which may include conduct not only at the specific point in time of the action complained of but also actions taken before and after as all of these may be relevant in divining bad faith in respect of the act."

[67] I can do no more than adopt those instructive pronouncements and apply them to the appeal at bar. It is therefore clear that the actions or events which are purported to constitute bad faith cannot be looked at in a vacuum or in isolation. I have done a comprehensive and thorough review of the evidence that was adduced before the judge and have not found a scintilla of evidence which can go towards satisfying the threshold of bad faith on the part of the customs officers. Consequently, the learned judge's decision, to the effect that the appellants failed to establish bad faith and therefore the claim was prescribed, cannot be impugned and the criticisms of her judgment are unwarranted.

[68] It must be highlighted that the appellants have taken a broad-brush approach to the contention that the customs officers acted in bad faith. Their particularisation and pleadings of bad faith raised no specific infractions but rather, were grounded in very general terms. To my mind, placing these assertions so broadly would not have placed the Crown in a position to adequately respond. In my view, the general allegations of bad faith in the pleadings and particulars were insufficient to justify a finding in the appellants' favour. It is not enough to simply allege bad faith. However, there must be particulars of bad faith which must be substantiated by the evidence that is lead. In this connection, I observe the pithily encapsulated principle in the case of **Three Rivers District Council v Governor and Company of the Bank of England**,²² a House of Lords decision wherein Lord Hope stated at paragraph 51 that:

“On the other hand it is clear that as a general rule, the more serious the allegation of misconduct, the greater is the need for particulars to be given which explain the basis for the allegation. This is especially so where the allegation that is being made is of bad faith or dishonesty. The point is well established by authority in the case of fraud.”

There is no doubt that the appellants have failed to properly plead bad faith and to adduce cogent evidence to substantiate their broad unparticularised allegations of bad faith on the part of the customs officers.

[69] In view of the totality of circumstances, I am of the considered view, that there was simply no evidence to support their bold assertion of bad faith. The judge was therefore correct in her treatment of this matter and did not err in her reasoning and conclusion that no bad faith could be imputed to the customs officers. Accordingly, their appeal also fails on this issue. There was simply no evidence to support the blanket assertion of bad faith which the appellants made.

²² [2001] UKHL 16.

Costs

- [70] Based on the totality of circumstances of this appeal, on the issue of costs and in accordance with rule 56.13(6) of the **Civil Procedure Rules 2000** ("the CPR"), the appropriate order is that each party shall bear its own costs.

Conclusion

- [71] In view of the foregoing, I would make the following orders:
- (a) the Fast Kaz Auto Supplies Limited, Mr. Curtis Hudson, James Enterprises Limited and Mr. Bryan James appeals against the decision of the *Cenac-Phulgence J* are dismissed in their entirety.
 - (b) each party shall bear their own costs on the appeal.

Summary of Conclusions

- (a) Section 40 of the **Constitution**, the supreme law of Saint Lucia, gives Parliament the power to legislate for the country. Parliament therefore has the right to legislate for the collection and management of duties and revenue. This law-making power culminated in the enactment of the Act, one of the legislations aimed at securing revenue and promoting an effective customs administration.
- (b) Section 7(2)(c) of the **Constitution** enables Parliament to make laws which grant powers of search of premises or anything contained therein to administrative bodies for the purposes of revenue collection. Section 94(1)(a) of the Act authorises the seizure and detention of uncustomed goods. This falls squarely within the protection given by section 7(2)(c) of the **Constitution**.
- (c) The Comptroller is empowered by section 94(1)(a) of the Act to issue this document of authorisation to customs officers to search premises where there were reasonable grounds for believing that an offence under customs laws was committed or that the premises were being

used for the purposes of harbouring or concealing uncustomed goods or articles.

- (d) Section 94(1)(a) of the Act does not confer judicial authority on an executive body and therefore does not breach the separation of powers doctrine. Section 94(1)(a), and by extension the Act, is enabled by section 7(2)(c) of the **Constitution**. Insofar as the Comptroller's power of search and seizure was found to be constitutional, there was no need to address section 6(6) of the **Constitution**.
- (e) Insofar as the claims were brought well beyond the 6-month period as provided by Article 2124 of the **Code**, and where the appellants failed to particularised the alleged acts of bad faith and to adduce evidence to substantiate their bare allegations of bad faith on the part of the customs officers, the learned judge was correct in her holding that the claim was prescribed, and consequently her decision cannot be impugned. The criticisms of her judgment are unwarranted.
- (f) The totality of circumstances of this case do not justify the departure from the provision of rule 56.13(6) of the CPR. Accordingly, each party shall bear their costs.

[72] I gratefully acknowledge the assistance of all learned counsel for their helpful submissions.

I concur.
Davidson Kelvin Baptiste
Justice of Appeal

I concur.
Michael J. Fay, QC
Justice of Appeal [Ag.]

By the Court

Chief Registrar

