

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

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2023/0028

BETWEEN:

NG MIN HONG

Appellant

and

[1] SOEMARLI LIE

[2] SUCCESS OVERSEAS FINANCE LIMITED

Respondents

Before:

The Hon. Mde. Vicki Ann Ellis
The Hon. Mde. Gertel Thom
The Hon. Mr. Darshan Ramdhani

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

Appearances:

Mr. Hermann Boeddinghaus, KC with him Ms. Kate Lan and Mr. James Noble for the Appellant
Mr. Matthew Hardwick, KC with him Mr. Richard Evans, Dr. Alecia Johns and Mr. Andre Sheckleford for the Respondents

2024: October 28;
2026: March 24.

Civil appeal – Share valuation - Debarring order for failure to comply with disclosure - Natural justice – Duty of judge hearing matter ex parte - Expert evidence – Whether expert report amounted to bare ipse dixit – Valuation in absence of financial information – Adverse inference from non-disclosure – Appellate interference with findings of fact

The appellant in this appeal was ordered to purchase the shares of the first respondent in Success Overseas Finance Limited, the second respondent, for a price to be determined by the court. In order to facilitate the sale of the second respondent's shares, a valuation of the second respondent's shares had to be performed by the court ("the valuation proceedings"). The second respondent's shares had to be valued as at 13th July 2017.

As part of the valuation proceedings, a series of orders were made by the High Court for disclosure and the appellant was found by the High Court and subsequently, the Court of Appeal, to have failed to comply with those disclosure orders. The consequence of the appellant's non-compliance was that it was debarred from participating in the hearing to determine the value of the second respondent's shares.

Expert witness, Mr. John Dawson, was retained by the first respondent for the purposes of the valuation proceedings. As a consequence of the appellant being debarred from partaking in the valuation hearing, Mr. Dawson's Expert Report was the only Expert Report before the High Court at the hearing to determine the value of the second respondent's shares. Though debarred, the appellant did attend the valuation hearing on a watching brief and was permitted to participate in relation to the determination of what costs is payable in relation to the application and the form of the court's order.

After the valuation hearing, the court rendered an oral judgment on 25th October 2023. The court ordered inter alia, (a) the price to be paid for the purchase by the appellant of the first respondent's shares in the second respondent is determined to be US\$154 million; (b) quasi-interest shall be payable by the appellant to the respondent from 13th July 2017 to the date of this order at the rate of 2.5% per annum in the total sum of US\$24,196,888 and (c) the appellant shall make an interim payment of the respondent's costs in relation to the conduct of the valuation proceedings in the sum of US\$315,000.00.

Being dissatisfied with the decision of the High Court, the appellant filed its notice of appeal on 11th December 2023 and advanced eight grounds of appeal which can be summarised as follows: (i) Wrongful debarring of the appellant; (ii) Improper Restriction on the Judge's Mandate; (iii) Total failure to consider other issues in the valuation; (iv) Failure in scrutinizing Expert Evidence; (v) Mr. Dawson's Credibility; (vi) Misdirection of technical questions to Counsel; (vii) Inappropriate Application of Adverse Inferences and (viii) Lack of Reasoning in Ex Tempore Judgment.

At the hearing of the appeal, the appellant abandoned its first ground of appeal and truncated the essence of its additional grounds of appeal to a challenge as to whether due process and the principles of natural justice were upheld by the High Court on hearing the application to value the shares of the second respondent where the appellant was debarred from participating in that hearing. Further, the appellant made clear that it does not seek to challenge the findings of the Expert Witness, Mr. Dawson and that the matter of quasi-interest is not a stand-alone ground of appeal.

Held: dismissing the appeal and awarding costs in favour of the first respondent to be agreed within 25 days failing which, costs should be assessed, that:

1. A litigant who has been debarred from participating in a hearing may observe the proceedings, but that litigant is not permitted to make submissions on the merit of the issues arising on an application at a hearing. To allow a debarred litigant to do such would ultimately defeat the purpose of debarment. The order debarring the appellant from participating in the hearing to determine the value of the second respondent's shares curtailed the contributions that the appellant was permitted to

make during that valuation hearing and there was nothing arising during that hearing that warranted any departure from the natural effect of debarment.

2. The duty of a judge conducting a hearing is to undertake a critical examination of the evidence before the court, which process may be assisted by the litigants through examination-in-chief, cross examination, and the consideration of the merits and demerits of the issues that arise, so as to enable the judge to form reasoned views on the credibility of witnesses and on matters relevant to their independence and impartiality. A judgment, that is dependent on expert evidence, should demonstrate that the judge understood the case, addressed the principal issues in the case, and contain sufficient reasoning to enable the parties to know why they won or lost the case. However, a judge is not required to give reasons for every conclusion he arrived at, particularly where this may have depended upon the impression which witnesses made on the judge and his assessment of the skill, knowledge and experience of an expert.
3. The first respondent had the duty of proving its case on a balance of probabilities. A comprehensive presentation of the evidence was undertaken by Counsel for the first respondent at the valuation hearing. The intricacies of the Expert Report were examined by Mr. Dawson being subjected to examination in chief on his Expert Report in the form of an enquiry rather than a rehashing of its contents. Mr. Dawson was tasked to explain the contents of his report, and where necessary, as is within the discretion of a judge to do, the judge posed questions to Mr. Dawson and to Counsel for the appellant. Frankly, in all of the circumstances which obtained in this case, this approach collectively facilitated a fair and balanced hearing.

Griffiths v TUI (UK) Ltd [2023] 3 WLR 1204 followed.

4. The appellant was in practical control of relevant information that would assist the court in ascribing a value to the second respondent's shares but failed to provide that information. As a consequence, the court did not have the benefit of key relevant information likewise, Mr. Dawson also did not have the benefit of the same for the purposes of preparing his Expert Report. The Expert Report acknowledges those shortfalls and used what are industry standards to advance assumptions to facilitate valuing the second respondent's shares being mindful of matters including the financial information it did have, market trends in the second respondent's industry, with reasoned positions being advanced to explain the conclusions presented. Notwithstanding those evidential constraints, the judge determined that Mr. Dawson was an impressive expert witness who was measured, professional, experienced, did not appear to be an advocate of the party who hired him and did a robust job in difficult circumstances. Those findings of fact were made after the judge had the benefit of observing Mr. Dawson being examined, hearing and considering his evidence as it emerged. This surely placed the judge in a prime position to form a view as to the cogency of Mr. Dawson's evidence. Further, the judge's findings discussed the shortfalls in the available evidence, specifically noting that even though the 2016 and 2017 financial statements for the second respondent were not available, an expert can use other indicators to come up with a value though such

would be more peripheral and general, but such would not be a failure in that evidence.

5. The process of valuation of a shareholding cannot be an exact science. Though it ultimately involves a finding of fact, elements leading up to such finding may well involve points on which different minds, approaching the matter judicially, could quite properly take different views, in other words, points to which there cannot be said to be exclusively one correct answer. The judge examined the nature of the second respondent's business, the comparables provided and explained why he preferred one methodology to another in determining the value of the second respondent's shares. Moreover, the judge viewed the evidence of the expert as being to the standard required to enable him to adjudicate on the matter despite the constraints. The absence of any additional areas identified by the judge for specific enquiry, apart from those he addressed, does not indicate insufficient scrutiny or improper restraint. In fact, on an examination of the oral judgment, it is apparent that the judge gave reasons for each position taken by him which demonstrates that he gave proper consideration to the evidence as he discharged his duties as an adjudicator.

Joiner v George [2002] EWHC 642 Ch applied.

6. Having not found favour with the substantive grounds of appeal, the order with respect to quasi-interest shall be maintained.

JUDGMENT

[1] **RAMDHANI JA [AG.]:** This is an appeal against the Order of the High Court made on 25th October 2023, insofar as it relates to the matters now under appeal, by which the court ordered as follows:

- (a) "The price to be paid for the purchase by the appellant of the first respondent's shares in the second respondent is determined to be US\$154 million.
- (b) Quasi-interest shall be payable by the appellant to the respondent from 13th July 2017 to the date of this order at the rate of 2.5% per annum in the total sum of US\$24,196,888.
- (c) The appellant shall make an interim payment on account of the respondent's costs in relation to the conduct of the valuation proceedings in the sum of US\$315,000.00."

- [2] An important aspect of this appeal is that it is brought against the background of the learned judge's earlier decision and order on 14th November 2022 to debar the appellant from participating in the valuation proceedings unless he gave specified disclosure by 4 p.m. on or before 2nd December 2022.
- [3] Being dissatisfied with the decision of the High Court, the appellant filed its notice of appeal on 11th December 2023 and advanced eight grounds of appeal which can be summarised as follows:
- (i) Wrongful debarring of the appellant
 - (ii) Improper Restriction on the Judge's Mandate
 - (iii) Total failure to consider other issues in the valuation
 - (iv) Failure in scrutinizing Expert Evidence
 - (v) Mr. Dawson's Credibility
 - (vi) Misdirection of technical questions to Counsel
 - (vii) Inappropriate Application of Adverse Inferences
 - (viii) Lack of Reasoning in Ex Tempore Judgment

Background

- [4] Though the Order of the High Court being appealed arises with respect to a suit that has been within the Court system for over 5 years with an extensive background, the relevant factual background for the purposes of this appeal is as follows:
- (a) The appellant was ordered to purchase the shares of the first respondent in Success Overseas Finance Limited, the second respondent, for a price to be determined by the court.
 - (b) To facilitate the sale of the second respondent's shares, a valuation of the second respondent's shares had to be performed by the court. The second respondent's shares had to be valued as at 13th July 2017.
 - (c) As part of that process to value the shares, a series of orders were made by the High Court for disclosure and the appellant was found by the High Court and subsequently, the Court of Appeal, to have failed to comply with those disclosure orders. The consequence of the appellant's non-compliance was that it was debarred from participating in the hearing to determine the value of the second respondent's shares. Also, the appellant's failure to disclose pertinent information meant that critical financial information in relation to the second respondent were not available for use to determine the valuation of the second respondent's shares.

- (d) Mr. John Dawson, an expert witness retained by the first respondent, provided an Expert Report dated 1st September 2023. As a consequence of the appellant being debarred from partaking in the valuation hearing, Mr. Dawson's said Expert Report was the only Expert Report before the High Court at the hearing to determine the value of the second respondent's shares.
- (e) The High Court conducted a three-day hearing of the application to determine the value to be ascribed to the second respondent's shares which would be the purchase price payable by the appellant for those shares. Over that three-day period, there was a day set aside for pre-reading, and two days for oral submissions which included a day of examination in chief of the expert witness, John Dawson. Though debarred, the appellant did attend that valuation hearing on a watching brief and was permitted to participate in relation to the determination of what costs is payable in relation to the application and the form of the Court's order.
- (f) At the end of the valuation hearing, the High Court rendered an oral judgment.

Submissions of the Parties

- [5] Despite the voluminous documentation provided to this Court, the case of the respective parties may be concisely summarised.
- [6] At the hearing of the appeal, the appellant abandoned its first ground of appeal and truncated the essence of its additional grounds of appeal to a challenge as to whether due process and the principles of natural justice were upheld by the High Court on hearing the application to value the shares of the second respondent where the appellant was debarred from participating in that hearing. Further, the appellant made clear that it does not seek to challenge the findings of the Expert Witness Mr. Dawson and that the matter of quasi-interest is not a stand-alone ground of appeal.
- [7] In relation specifically to the conduct of the valuation hearing, the appellant took issue with the High Court restricting its queries to two of the nine step valuation analysis advanced by the Mr. Dawson, choosing a valuation range based on what was advanced by Mr. Dawson, not engaging in sufficient scrutiny, asking technical

questions to Counsel instead of the Mr. Dawson to explain the contents of the Expert Report, and that the judge pre-determined the matter prior to the hearing. Further, the High Court wrongly relied on **Maso Capital Investments Limited et al v Trina Solar Limited**¹ in relation to drawing adverse inferences and, the oral judgment delivered lacked reasoning.

- [8] The first respondent's position was that the High Court considered all the circumstances of the case prior to making its decision and properly presented its findings. It had the benefit of a full examination in chief of the Expert Witness, it was taken through all aspects of the Expert Report. After three days of hearing, the court was fully versed with the material before it and made conclusions based on the available evidence and in keeping with the law despite the consequences of the appellant not disclosing salient information for use in the valuation of the second respondent's shares. Further, that the court fully understood its duty to be performed at the hearing when evidence was unchallenged.

Analysis and Findings

- [9] I consider that the judge's conclusion was one which was reasonably open to him and cannot be said to be a decision which no reasonable judge could have reached. It is appropriate here to note the proper role of an appellate court in an appeal against findings of fact by a trial judge. As the Privy Council discussed in numerous cases like **Beacon Insurance Company Limited v Maharaj Bookstore Limited**,² an appellate court must be satisfied that the lower court was plainly wrong, its findings cannot reasonably be explained or justified or a trial judge failed to analyse properly the entirety of the evidence. On this appeal, the findings of the judge cannot be faulted to the required legal threshold such that it should be set aside.

¹ 2023 (1) CILR 569.

² [2014] UKPC 21.

Appellant Debarred from Participating in the Hearing

- [10] The appellant's ground of appeal challenging its debarment from participating in the lower court hearing on the basis that it had a pending application for leave to appeal before the Privy Council was rejected by the Privy Council prior to the hearing of this appeal. As such, the appellant rightfully acknowledged the state of affairs at the start of the hearing and so that ground of appeal naturally fell away.
- [11] Notwithstanding the above, the debarment of the appellant from participating in the hearing before the High Court is an important factor that impacts the consideration of issues arising on this appeal.
- [12] The order debarring the appellant from participating in the hearing to determine the value of the second respondent's shares curtailed the contributions that the appellant was permitted to make during that valuation hearing. That is a direct consequence of debarment. A litigant who has been debarred from participating in a hearing may observe the proceedings, but that litigant is not permitted to make submissions on the merit of the issues arising on an application at a hearing. To allow a debarred litigant to do such would ultimately defeat the purpose of debarment. Further, having reviewed the totality of the materials before the Court, there was nothing arising during that hearing that warranted any departure from the natural effect of debarment.

Judges Mandate and Exercise of Discretion

- [13] The issues arising on grounds 2, 3, 4, 5, 6, 7 and 8 of the appeal centres on the duty of a judge hearing a matter essentially *ex parte* and what amounts to proper judicial conduct within the context of due process and natural justice in such circumstances. As such, it was fitting that the appellant's oral arguments addressed these matters as a collective consideration.

- [14] The duty of a judge conducting a hearing is to undertake a critical examination of the evidence before the court, which process may be assisted by the litigants through examination-in-chief, cross-examination, and the consideration of the merits and demerits of the issues that arise, so as to enable the judge to form reasoned views on the credibility of witnesses and on matters relevant to their independence and impartiality. When a judge has to examine matters requiring specialised knowledge (as in this case), the provision of expert evidence is salient, as an expert witness should provide a court with an independent and impartial report on matters he or she is duly qualified to give expert evidence related to the issues to be determined by the judge. Expert witness evidence is meant to provide the court with a technical analysis of matters before it for consideration. Unlike witnesses of facts, expert witnesses provide opinion evidence based on their expertise, experience, resources and a consideration of the material provided to them with respect to the matters being examined.
- [15] Courts are not obligated to act in accordance with an expert report, as the High Court in the present case acknowledged, as it is within the discretion of a judge to disregard an expert's report. If an expert report will be disregarded, coherent and reasoned opinions must be provided for doing so. A judgment, that is dependent on expert evidence, should demonstrate that the judge understood the case, addressed the principal issues in the case and contain sufficient reasoning to enable the parties to know why they won or lost the case.
- [16] However, a judge is not required to give reasons for every conclusion he arrived at, particularly where this may have depended upon the impression which witnesses made on the judge and his assessment of the skill, knowledge and experience of an expert.

[17] In **Griffiths v TUI (UK) Ltd**,³ though not factually on point with this case, Lord Hodge DPSC identifies several principles of law relevant to this case within the context of a fair trial:

At paragraph 36:

“In this judgment I address civil proceedings and leave to one side questions of criminal procedure. It is trite law that as a generality in civil proceedings, the claimant bears the burden of proof in establishing his or her case. It is trite law that the role of an expert is to assist the court in relation to matters of scientific, technical or other specialised knowledge which are outside the judge’s expertise by giving evidence of fact or opinion; but the expert must not usurp the functions of the judge as the ultimate decision-maker on matters that are central to the outcome of the case. Thus, as a general rule, the judge has the task of assessing the evidence of an expert for its adequacy and persuasiveness. But it is trite law that English law operates an adversarial system, and the parties frame the issues for the judge to decide in their pleadings and their conduct in the trial. It is also trite law that, in that context, it is an important part of a judge’s role to make sure that the proceedings are fair.

At paragraph 37:

“Because an expert’s task is to assist the judge in matters outside the judge’s expertise, and it is the judge’s role to decide the case, the quality of an expert’s reasoning is of prime importance. This court gave guidance on the role of the expert in *Kennedy v Cordia* [2016] [sic] 2016] 1 WLR 597, in which, in the judgment of Lord Reed and Lord Hodge JJSC with whom the other Justices agreed, it was stated:

“48. An expert must explain the basis of his or her evidence when it is not personal observation or sensation; mere assertion or ‘bare ipse dixit’ carries little weight, as the Lord President (Cooper) famously stated in *Davie v Magistrates of Edinburgh* 1953 SC 34, 40. If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless. Wessels JA stated the matter well in the Supreme Court of South Africa (Appellate Division) in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352, 371: ‘an expert’s opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert’s bald statement of his opinion is not of any real assistance.

³ [2023] 3 WLR 1204.

Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.' As Lord Prosser pithily stated in *Dingley v Chief Constable, Strathclyde Police* 1998 SC 548, 604: 'As with judicial or other opinions, what carries weight is the reasoning, not the conclusion.'"

At paragraph 63:

"there may be a bold assertion of opinion in an expert's report without any reasoning to support it, what the Lord President (Cooper) in *Davie v Magistrates of Edinburgh* described as a bare ipse dixit. But reasoning which appears inadequate and is open to criticism for that reason is not the same as a bare ipse dixit."

- [18] The first respondent had the duty of proving its case on a balance of probabilities. A comprehensive presentation of the evidence was undertaken by Counsel for the first respondent at the valuation hearing. The intricacies of the Expert Report were examined by Mr. Dawson being subjected to examination in chief on his Expert Report in the form of an enquiry rather than a rehashing of its contents. Mr. Dawson was tasked to explain the contents of his report, and where necessary, as is within the discretion of a judge to do, the judge posed questions to Mr. Dawson and to Counsel for the appellant. Frankly, in all of the circumstances which obtained in this case, this approach collectively facilitated a fair and balanced hearing.

Does the Expert's Report and by extension the valuation determined by the Judge with the assistance of that Expert Report in the lower Court be described as "bare ipse dixit"?

- [19] It is useful to put the circumstances of how the second respondents' shares were valued into context as "*bare ipse dixit*" assertions do not fit into this case. The appellant was found to be in practical control of relevant information that would assist the court in ascribing a value to the second respondent's shares but failed to provide that information. As a consequence, the court did not have the benefit of key relevant information likewise, Mr. Dawson also did not have the benefit of the same for the purposes of preparing his Expert Report.

- [20] The appellant's failure made it such that the expert witness Mr. Dawson worked with information not directly based on the second respondent's financial state at the valuation date and warranted that Mr. Dawson provide as he stated, "an analysis which shows what the valuation outcomes would be if certain assumptions were made." Mr. Dawson's report went further to state that if he was provided with the requested information, the outcomes of the valuation analysis might have been different, perhaps materially so, from the outcomes shown in that report.
- [21] The Expert Report acknowledges those shortfalls and used what are industry standards to advance assumptions to facilitate valuing the second respondent's shares being mindful of matters including the financial information it did have, market trends in the second respondent's industry, with reasoned positions being advanced to explain the conclusions presented. Those were the circumstances within which the High Court was provided with an Expert Report to assist it in ascribing a value to the shares of the second respondent as at 13th July 2017.
- [22] Notwithstanding those evidential constraints, in the oral delivery of the judgment, the judge determined that Mr. Dawson was an impressive expert witness who was measured, professional, experienced, did not appear to be an advocate of the party who hired him, and did a robust job in difficult circumstances. Those findings of fact were made after the judge had the benefit of observing Mr. Dawson being examined - hearing and considering his evidence as it emerged. This surely placed the judge in a prime position to form a view as to the cogency of Mr. Dawson's evidence. Further, the judge's findings discussed the shortfalls in available evidence, specifically noting that even though the 2016 and 2017 financial statements for the second respondent were not available, an expert can use other indicators to come up with a value though such would be more peripheral and general but that did not render the evidence inadmissible or valueless.

- [23] The court in **Joiner v George**⁴ usefully notes at paragraph 101 “...the process of valuation of a shareholding in a case such as this cannot be an exact science. Though it ultimately involves a finding of fact, elements leading up to such finding may well involve points on which different minds, approaching the matter judicially, could quite properly take different views – in other words, points to which there cannot be said to be exclusively one correct answer. It could be that, on some of the conclusions of fact reached by the judge in his judgment on valuation, other minds would have taken different views.” Put differently, whilst the opinion of many may vary as to what additional enquiries could have been made and matters further addressed in a valuation hearing, that falls within the realm of reasonable disagreement when a discretion is being exercised. Those do not equate to “bare ipse dixit” assertions.
- [24] The judge found as a fact that the 2016 and 2017 financials may well have been withheld by the appellant because those may have been better financial years than 2015 where there was a drop as 2015 appeared to be an anomalously low year in the second respondent’s business. Moreover, that the range of the potential value of the shares was conservative and when a range is conservative, it could be higher or lower, and therefore, the higher end of the range remained a supportable and reliable estimation and, one adds, just as the lower end would.
- [25] Whilst that analysis may have been adverse to the appellant, it was not an unreasonable or unsupported position to take, as the judge understood the tasks at hand and that the actions of the appellant placed the appellant in a vulnerable position where it was not allowed to participate and offer an alternative position.
- [26] The judge examined the nature of the second respondent’s business, the comparables provided and explained why he preferred one methodology to another in determining the value of the second respondent’s shares. Moreover, the judge viewed the evidence of the expert as being to the standard required to enable him

⁴ [2002] EWHC 642 Ch.

to adjudicate on the matter despite the constraints. The absence of any additional areas identified by the judge for specific enquiry, apart from those he addressed, does not indicate insufficient scrutiny or improper restraint. In fact, on an examination of the oral judgment, it is apparent that the judge gave reasons for each position taken by him which demonstrates that he gave proper consideration to the evidence as he discharged his duties as an adjudicator.

[27] In addition to the above, after reviewing Mr. Dawson's Expert Report and the hearing transcript, I cannot identify any basis that meets the legal standard required to overturn the judge's decision. There is no evidence presented on this appeal that would place this Court in a position where it finds itself in disagreement with the findings of fact made by the High Court on the premise that the High Court was plainly wrong, unreasonable or unjustified or wanting in analysis for it to conclude that the Judge erred in making those findings.

[28] The allegation that the judge pre-determined the matter prior to the hearing is an unfair criticism of the lower court. The process undertaken by a court to prepare for the hearing of a matter always warrants that it contemplates a series of potential outcomes without deciding on an outcome. Without more, that process can by no means lead one to a conclusion that a matter was predetermined prior to it being heard. The lower court had three days set aside for hearing this case despite it being an unopposed Application - a day for pre-reading and two days for oral hearings and those three days were used in full based on the record from the lower court. Additionally, this Judge had adjudicated this matter for over 5 years and was familiar with the peculiarities of the matter. Moreover, delivering an oral judgment after a hearing is not novel and by no means demonstrates a lack of scrutiny or the inference of the appellant that the lower court was too hasty to render judgment.

Quasi-interest Award

- [29] With respect to the order of a quasi-interest award, in oral arguments, the appellant submitted that this was said to not be treated as a standalone appeal ground, as it was agreeable to this award in principle but on a consideration of the substantive issues warranting the decision of the High Court to be overturned, any such award would consequently be set aside. Having not found favour with the substantive grounds of appeal, the order with respect to quasi-interest shall be maintained.

Disposition

- [30] The appellant has failed to present to this Court any grievous shortfall in the conducting of the hearing that can amount to a finding that the High Court erred the consequence of which warrants a reconsideration of the valuation ascribed. It is therefore ordered as follows:

- (1) The appellant's appeal is dismissed.
- (2) Costs are awarded in favour of the first respondent to be agreed within 25 days failing which, costs should be assessed.

Postscript

- [31] This appeal was heard before the liability appeal, but this decision was withheld pending the determination of that appeal in the event that that appeal was successful. That would have meant that there is no basis for this valuation to stand upon the liability issue. That appeal has now been determined, upholding the fundamental underlying premises of this valuation appeal.

[32] The Court wishes to thank the parties for their patience.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Gertel Thom
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar