

Shahida

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
A.D. 2008

CLAIM NO: ANUHCV 2008/0236

BETWEEN:

J.J ANDREW MCDONALD

Claimant

and

ERNEST HENRY

Defendant

Appearances:

Ms. E. Ann Henry and Ms. Shahida Ali-Schneider for the Claimant
Mr. Clement Bird for the Defendant

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2009: November 10
2010: May 10
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JUDGMENT

- [1] **MICHEL, J.:** By Claim Form with Statement of Claim filed on 14th April 2008 the Claimant, J. J. Andrew Mc Donald, claimed against the Defendant, Ernest Henry, the sum of \$3,026,014.20, being commission of 16 ½% of the equivalent of the amount paid or the value given by the Government of Antigua and Barbuda to the Defendant, pursuant to an agreement made between the Claimant and the Defendant in writing the 27th day of October 1998 or, alternatively, the said amount as reasonable remuneration for work done at the request of the Defendant, plus interest and costs.

- [2] On 27th June 2008 the Defendant filed a Defence to the claim denying any entitlement of the Claimant to compensation, other than a reasonable sum for writing letters and a proposal and for seeking audience with the relevant parties, and avers that the sum of \$1,500 is a reasonable reflection of a proper sum due to the Claimant therefore.
- [3] On 15th October 2008 the Claimant filed a Reply joining issue with the Defendant on his Defence.
- [4] Following Case Management Conference, Mediation and Pre-Trial Review and the filing of Lists of Documents, Witness Statements, Pre-Trial Memoranda and Core Trial Bundles, the trial of the matter took place on 10th November 2009, with the Claimant and the Defendant giving evidence on their own behalf and calling no witnesses.
- [5] In his Witness Statement, the Claimant stated that he was approached by the Defendant in early 1998, who sought his professional services. That he and the Defendant had a discussion on the Defendant's request that he (the Claimant) negotiate fair and just compensation relative to 138 acres of land which had been compulsorily acquired by Government from the Estate of the Defendant's late father, of which the Defendant was personal representative. That he and the Defendant spoke at length about the exhaustive efforts which the Defendant and his Attorneys had made since the early 1980s to get the Government to revise the amount of US\$1million that it had paid the Estate upon acquisition of the land in 1981. That the Defendant told him that he had engaged Fenton Ramsohoye, Q.C, Al James and Harold Lovell over that period and they had all tried to reach a settlement with Government but that their efforts had proved fruitless. That after he listened to the Defendant and considered what the Defendant had told him about the way in which the matter had been handled from the outset, he decided to take up the issue on the Defendant's behalf. That he did so because he thought that the Defendant's claim was just and because he (the Claimant) had reasonably good relations with the Prime Minister and members of his Cabinet, which he felt would assist him in advancing the matter for the Defendant. That he told the Defendant he would work for him towards

reaching settlement with the Government and that his fee would be 16 ½% of the total amount of the settlement he obtained on the Defendant's behalf. That the Defendant agreed to this and informed him that he was happy to pay him at that rate because Mr. Ramsohoye and others had asked for 33 1/3% of any settlement. That he wanted to be sure he would be paid so he told the Defendant that they should sign a document authorizing him to act on the Defendant's behalf and stating what his fee would be and that the Defendant agreed to this. That the Defendant arranged with Harold Lovell, then engaged in private legal practice, to prepare a document setting out their arrangement, which the Defendant signed and gave him and which he kept.

- [6] The Claimant stated that, having settled these arrangements with the Defendant, he started to work on the matter. That he prepared a letter dated 3rd November 1998 to the then Prime Minister, Hon. Lester Bird, setting out the issues for his consideration. That the purpose of the letter was to introduce himself as the person authorized to act on behalf of the Defendant and to lay out the claim which the Defendant was making for a review of the compensation paid by the Government so that the Defendant and the other beneficiaries could be paid fair and just compensation for the land. That he also asked in his letter whether an arrangement could be made for him to meet with the Cabinet on the matter. That after he delivered the letter to the Prime Minister he met with him informally more than once and the Prime Minister confirmed that the matter would have to be dealt with by Cabinet, so he pressed the Prime Minister to give him an opportunity to make a presentation to the Cabinet. That the Prime Minister kept promising that he would make the necessary arrangements, but progress was slow. That as time passed without him being given an opportunity to meet with the Cabinet, he became concerned that the Prime Minister may have been put off by the amount of money being claimed (\$17,339,480) as expressed in his letter of 3rd November 1998 and that the Government would not want to make such a large pay out to the Defendant so soon before the general elections due in March 1999. That he discussed these concerns with the Defendant and he and the Defendant agreed to broaden the approach to the Government. So, on 26th November 1999 he wrote another letter to Prime Minister Bird in which he made an alternative proposal for settlement of the Defendant's claim.

- [7] According to the Claimant in his Witness Statement, he suggested in that letter that the Government would settle the claim partly by transferring 25 acres of Government land which was zoned for residential development to the Defendant. and that the value of the land would then be deducted from the amount of the claim, thus reducing the cash which the Government would have to pay. That he thought that this would be attractive as elections were close and, of course, it would give the same value to the Defendant as was originally claimed.
- [8] The Claimant also stated in his Witness Statement that he had advised the Defendant to quietly speak to Hon. Hilson Baptiste, the Parliamentary Representative for the constituency in which the lands were located and who was a member of the opposition party, because he knew that Mr. Baptiste was aware of the issue and wanted to make it a campaign issue in the general elections and he hoped that the Prime Minister's awareness that Mr. Baptiste was aware of the issue would encourage the Prime Minister to seek to resolve the matter without allowing it to become a political football. That unfortunately the strategy did not work and Government did not settle the matter. That notwithstanding, he persisted in his efforts of lobbying the Prime Minister. That he kept up his visits to the Prime Minister's office and the Prime Minister started to display more and more irritation at his persistence. That he recalled the Prime Minister telling him in May 2003 that the Government having acquired the 138 acres of land legally, was not going to be pushed into paying millions of dollars in compensation. That it became apparent that he was wearing out his welcome at the Prime Minister's office but he nonetheless continued to lobby on behalf of the Defendant to those that would be sympathetic to the cause of equity and justice. That finally, in mid 2003, the Prime Minister told him that he had appointed his Chief of Staff, Asot Michael, to research the matter and that he would get back to him (the Claimant). That later that year the Prime Minister said that the research had shown that the compensation paid to the beneficiaries had been accepted by them and, as such, there was no basis for the Government to revisit the matter because his argument relative to unjust compensation was groundless. That he told the Prime Minister that the beneficiaries could not have given consent, but the Prime Minister's general attitude

towards him following what he termed the research done by Mr. Michael made him realize that pursuing the matter with the Prime Minister was not likely to be successful. That he told the Defendant his thoughts on the matter and said to him that they should look to the possibility of a change in Government following the next general elections due in March 2004 because he felt that if the Defendant was going to have this matter resolved it would more likely happen with a new Government.

[9] The Claimant stated that whereas he had earlier urged the Defendant to keep his approaches to Mr. Baptiste quiet, he (the Claimant) decided that there was no point in maintaining that level of sensitivity and so he advised him to turn up the heat by seeking the assistance of Mr. Baptiste, who was again a candidate for the constituency. That the Defendant promised to do what he could and attended every pre-election meeting of Mr. Baptiste and cooked and served meals at the meetings in an effort to give moral and financial support to Mr. Baptiste, while he (the Claimant) continued his lobbying efforts. That once again he and the Defendant felt hopeful that a resolution would be reached because the members of the UPP had indicated that if they won the elections they would settle the Defendant's claim for compensation. That the UPP won the general elections in March 2004.

[10] The Claimant stated that after the formation of the new Government, he and the Defendant met again at his (the Claimant's) office and the Defendant told him that Minister Hilson Baptiste suggested that they present the Government with another settlement proposal. That he (the Claimant) prepared a report which documented information and presented options upon which the UPP administration could make an informed decision and justify their position to award a fair and just compensation for the lands. That he prepared the background summary and settlement proposal with the exhibits which were referred to and attached to the letter dated 17th April 2004. That the letter was prepared by him and signed by the Defendant. That the background summary consisted of a historical account of the efforts made by him and the Defendant previous to 2004. That the settlement proposal with exhibits consisted of four proposed options which would be considered as acceptable by the beneficiaries of the Estate of the Defendant's father. That one of the

options which he prepared – option 4 – was the proposal subsequently accepted by the Government at Cabinet in 2005 and approved by Parliament in 2007. That this option was for the return of 38.5 acres to the Defendant and for payment of \$12,546,000 in cash. That he invested six years worth of research and information in order to provide this convincing proposal in 2004.

[11] The Claimant stated in his Witness Statement that after he presented the letter and report to the Defendant (in 2004) the Defendant informed him that he would deliver them to the Prime Minister. That in the months that followed he kept in touch with the Defendant, who made frequent trips to his (the Claimant's) office. That eventually, on one of the Defendant's visits to his office, in or about May or June 2004, the Defendant told him that he had learnt that the Attorney General was reviewing the letter and the report. That they felt quite optimistic and the Defendant started to discuss with him that he would make thank you gifts of money to certain people who he thought had assisted in getting the matter to the stage at which he felt it had reached and that he (the Claimant) even agreed then that he would assist him by foregoing a portion of his fees, reducing them from 16 ½% to 10%. That several months followed and he and the Defendant started to feel a bit frustrated over the length of time it was taking for the Government to decide which option for settlement it would choose.

[12] The Claimant stated that he was aware that the Defendant was speaking to members of the Government about the matter but he did not have a problem with that because he felt that he and the Defendant were working collaboratively and that it was the Defendant's choice whether he invited him (the Claimant) along to such meetings or not. Then in April 2005 he was informally told by Hon. Hilson Baptiste that the Cabinet had met and agreed to return 38.5 acres of land and pay more monies for compensation but that the amount to be paid in cash would be decided at a later date. That he was very excited upon hearing this and he went to see the Defendant at his home in order to congratulate him. That he realized then that the Defendant was aware that Cabinet had met and agreed to settle the matter and to pay compensation. That as far as they were concerned all that was left to be done was for the official announcements to be made because he (the Claimant) had been

able to get the Government to agree to review and revisit the compensation package paid for the acquisition of the land. That in the months that followed he did not see much of the Defendant, but one day in early September 2005 he met the Defendant in traffic and the Defendant informed him that the Government was in the process of finalizing the return of the lands. That sometime passed and he did not hear anything from the Defendant and then on 13th April 2006 he (the Claimant) was driving in the area close to the Defendant's home and saw the Defendant going home and followed him there. That he and the Defendant started to discuss the matter and the Defendant told him that he had learned that the Government intended to sell some of the lands to a foreign investor and that his daughter, who was a lawyer based in Montserrat, had told him that she had found that when the original acquisition had taken place there were certain irregularities in that the intention to acquire the land was not properly gazetted. That based on this the Defendant felt that the Government should be returning all of the lands, as was outlined in Option 2 of the report of 17th April 2004 or compensate him according to Option 1 which was for a cash payment representing the value of all of the lands plus interest.

- [13] The Claimant stated that at that meeting the Defendant showed him a survey drawing of the 38.5 acres of land to be returned by Government and explained to him that he was in the process of subdividing the 38.5 acres and that he (the Defendant) would be selling a portion of it and retaining 11 acres for his family. That he said to the Defendant that before he sold to others he should remember the agreement because he (the Claimant) would be interested in getting land for a portion of his fees, to which the Defendant responded by asking "what agreement is that." That he realized that the Defendant was upset about the foreign investors, but he believed that the Defendant was only pretending not to remember their agreement, so he told him that he would send him a copy of the agreement. That he did send the Defendant a letter dated 7th May 2006 making a claim and enclosed with it a certified copy of their agreement dated 27th October 1998. That he got no reply from the Defendant so he decided to engage his attorneys to deal with the matter. That his attorneys prepared a letter to the Defendant dated 21st March 2007 in which a demand was made for the payment of the value of the land re-vested in the Estate of the late Ernest Henry. That the letter was met with opposition by the Defendant's attorneys and to

date he has not received any monies under the agreement of 27th October 1998 despite having provided his services between the years 1998 to 2006.

[14] The Claimant stated that he subsequently learnt that 38.5 acres were returned to the Defendant and his family and they were paid \$15M. That he later became aware of a letter dated 24th September 2006 from the Attorney General to the Defendant in which reference was made to the letter or report of 17th April 2004 which he had prepared for the Defendant. That it seemed clear to him that the settlement which had now been realised by the Defendant was entirely based on the work which he (the Claimant) did on behalf of the Defendant as agreed in October 1998. That he is satisfied that his proposal report dated 17th April 2004 directly influenced the Government's decision to give as a settlement the 38.5 acres of land and \$15M and also informed the debate on the matter in Parliament when the settlement was formally ratified.

[15] The Claimant stated that at no time did the Defendant withdraw the agreement and at no time did the Defendant say to him that he should cease to work on the Defendant's behalf and at no time did he indicate that he would withdraw from his representation of the Defendant. That the Defendant has failed and/or refused to pay him the sums owed under the agreement, such sum being 16 ½% of the settlement achieved from the Government and he (the Claimant) seeks to be compensated for the same. The only monies paid to him by the Defendant were the sums of \$500 on or about September 2001 (which he needed then to pay to register his daughter at school) and US\$100 and EC\$200 on or about 3rd May 2005 (upon a request by him to the Defendant for an advance on the money which he would be paying him for his services). That these were monies paid to him by the Defendant towards the amount that he was claiming.

[16] Under cross examination, the Claimant testified that the authorization dated 27th October 1998 is the authorization upon which his claim is based. That in the second paragraph of the authorization it is clearly stated that the undertaking is to pay him 16 ½ % of the total sum that he is able to negotiate. That, when it was put to him that this speaks to direct action on his part which led to a result, he said that the action with respect to negotiation

had taken different forms and that it was not necessarily the act of negotiating with the former or the present Government. That the word negotiate did not necessarily confine itself just to verbal discussions with the former or present Government. That he did not express any reservation with the wording used in the authorization. That initially he came upon the Defendant purely by chance and struck up a conversation with him, subsequent to which he offered his services to the Defendant. That the Defendant's situation was basically common knowledge in Antigua. That he offered his services based on his knowledge of the Prime Minister and members of his Cabinet and his connections with the ruling party at the time, which he thought would assist him. That based on his knowledge of them he thought he could advance a case for fair and reasonable compensation on behalf of the Defendant.

[17] When the contents of paragraphs 10 to 12 of the Witness Statement of the Defendant were put to the Claimant, he agreed with paragraph 10, which addressed the Defendant's well known and well documented difficulties with the ALP-led Government, which it is stated were public knowledge and the subject of discussion throughout Antigua and Barbuda, and the Claimant informing the Defendant of his contacts within the ALP-led Government. The Claimant also agreed with paragraph 11 of the Defendant's Witness Statement which addressed the Claimant's assurance to the Defendant that he (the Claimant) was in a position to assist to have the matter resolved and his convincing the Defendant that if his services were retained the matter would have been speedily and satisfactorily resolved by the Claimant's intervention with the Government of the day. The Claimant however stated that the statements in paragraph 12 of the Defendant's Witness Statement addressing the need for the Claimant to pay some of the Ministers of Government at the time for their assistance was not correct.

[18] Upon being referred to his letter of 3rd November 1998 addressed to the Prime Minister, the Claimant agreed that the letter is a reasonably basic letter the sum total of which was a bare claim for compensation; that there was either a typographical or mathematical error in the calculation of the amount due to the Defendant; and that the calculation of the interest on the amount due was also incorrect.

[19] After denying that his representations about the closeness of his relationship with the Defendant was a fabrication, the Claimant testified that he differed with Counsel for the Defendant that nothing was achieved as a result of the letter of 3rd November 1998, although he concedes that there was no settlement as a result of the letter. He acknowledges that the letter dated 26th November 1999 is the second letter he wrote and that it was written eight months after the general elections of March 1999. That the second letter is a one page letter containing a request for land only. That as of November 1999 no settlement was effected as a result of that letter. That the only reference to any contact with a member of the UPP - led Government in his Witness Statement is a reference to being informally told by Hon. Hilson Baptiste in April 2005 that the Cabinet had agreed to return 38.5 acres of land and to pay compensation but that the amount to be paid in compensation would be decided at a later date. That he never claimed to have any influence whatsoever with anyone in the UPP - led Government. That between the general elections of March 2004 (when the UPP formed the Government) and the chance meeting of Mr. Baptiste in April 2005, he never claimed to have any contact with anyone in the Government.

[20] The Claimant denied that the contents of paragraphs 39 to 44 of his Witness Statement in which he spoke of strategy discussions with the Defendant prior to the March 2004 general elections about engagement with Hon. Hilson Baptiste and other members of the UPP were fabrications on his part. That he was well aware that the Defendant was a long-standing supporter of the UPP and that Mr. Baptiste was his long-time friend.

[21] The Claimant testified that the letter dated 17th April 2004 to the newly-elected Prime Minister was prepared by him at the Defendant's request and that he collaborated with the Defendant on the proposal contained in the letter, with the Defendant giving him all the facts and he formulating them in the letter. That the Defendant signed and delivered the letter. That he agrees that any settlement of the matter would have to comprise payment of money, return of land or both. That he begged to differ with Counsel for the Defendant that the final agreement reached was the product of negotiations that did not involve him at

all, because it did involve the letter of 17th April 2004 drafted by him. That it was the Defendant's prerogative to have meetings with the UPP - led Government and that he did not know of the meetings. That he did not himself schedule any meetings. That he however begs to differ with Counsel for the Defendant that he had no involvement or presence in any settlement negotiations after 2004 between the Defendant and the Government. That he cannot point to any involvement he had in any such meetings or negotiations.

[22] The Claimant was referred to the letter dated 28th August 2006 written by the Defendant to the Prime Minister, but begged to differ with Counsel for the Defendant that the proposal for compensation contained in the letter is completely different from the proposal contained in the letter of 17th April 2004.

[23] The Claimant was referred to paragraphs 57, 58 and 59 of his Witness Statement and denied that the contents thereof are a fabrication and that the Defendant only made one visit to his office. He begged to differ with Counsel for the Defendant that the Defendant never held out to him that he was working in collaboration or together with him. The Claimant also denied that the contents of paragraphs 62 to 65 of his Witness Statement where he spoke of a conversation with Mr. Baptiste in April 2005, a visit to the Defendant's home thereafter and the Defendant giving him US\$100 and EC\$200 were a fabrication.

[24] The Claimant denied that from or after October 2005 the Defendant told him that his family was taking a different approach which did not require his services, but he admits that he had no involvement in the letters to the Prime Minister of 14th April 2006 or 28th August 2006, neither did he have any knowledge (other than through disclosure in the course of this case) of the Attorney General's response of 4th September 2006. He concedes too that he had no input into or knowledge of various pieces of correspondence to and from the Defendant on the settlement of the compensation or of other steps taken by or on behalf of the Defendant after 2004 in connection with the settlement.

[25] In his Witness Statement, the Defendant related the history of the problem which his family had with the Government leading to their claim for restoration of or compensation for 138.5 acres of land acquired by Government from the Estate of his late father. He stated that his difficulties with the ALP - led Government were well documented and of public knowledge and discussion throughout Antigua and Barbuda. That in or about 1998 he encountered the Claimant in passing and the Claimant informed him of his contacts with individuals within the Government. That the Claimant assured him that as a result of these contacts he was in a position to assist in having the matter resolved. That arising from these discussions he was convinced that if he retained the Claimant's services his family's concerns would have been speedily and satisfactorily resolved by the Claimant's intervention with the ALP - led Government. That in October 1998 he authorized the Claimant to act on his behalf and that the Claimant's brief specifically was to negotiate a settlement with the Cabinet of Antigua and Barbuda in order to obtain appropriate compensation in respect of the lands. That he met on roughly three occasions with the Claimant and provided him with details of the nature of the representations he wished him to make. That he told the Claimant that he would be interested in a settlement which would reflect the actual market value of the land at the time of the purported acquisition or alternatively a combination of cash and some lands to that value. That he is aware that the Claimant wrote a letter dated 3rd November 1998 addressed to Prime Minister Bird, but he has absolutely no knowledge whether the Claimant ever met or held discussions with the Prime Minister or whether the letter was even submitted or delivered to the Prime Minister. That he is also aware that the Claimant wrote another letter dated 26th November 1999 to the Prime Minister, but he similarly has no knowledge of whether or not this letter was even submitted or delivered to the Prime Minister. That in any event, whether or not the Claimant submitted either or both of these letters to the Prime Minister or discussed the matter with the Prime Minister and/or lobbied Ministers of Government individually, the letters and his actions utterly failed to secure any settlement or compensation with the ALP - led Government. That there is no assertion whatsoever of the Claimant ever having met with any duly-constituted ALP Cabinet. That indeed, the entirety of the Claimant's claim points only to efforts at seeking such audience, all of which failed.

[26] The Defendant stated that subsequent to the general elections of March 2004 the Claimant did in fact prepare a letter dated 17th April 2004 with his (the Defendant's) input to the new Prime Minister, which letter the Defendant signed and submitted. That the letter contained a background summary of events which clearly stated that "previous attempts to negotiate a settlement with the Lester Bird administration have failed" and that "Cabinet never had the opportunity to discuss the proposal." That there is no assertion whatsoever in the Statement of Claim of the Claimant having met with the UPP Cabinet or any member thereof. That there is no evidence whatsoever of the Claimant having ever met with Prime Minister Spencer, as he alleged that he did with Prime Minister Bird. That in total, therefore, it appears that the Claimant's claim is based on the mere fact of having written the letter of 17th April 2004 with the synopsis attached, and no more.

[27] The Defendant stated that subsequent to the change of Government, he personally held many meetings with members of the Government, with whom he had very good relations and he was constantly assured that the matter was being attended to. That by October 2005, however, the situation had not changed in that agreement had still not been reached with the Government, and his daughter (Esco Henry) who is an Attorney at Law, told him something. That he then spoke at length to the Claimant, by which time such efforts as he had made had been unsuccessful for seven years, and he told the Claimant what they had uncovered. That he further told the Claimant that in view of that discovery, they would be pursuing a new angle with the Government and that he did not require his services any longer. That he repeated this to the Claimant on several subsequent occasions over time.

[28] The Defendant stated that he wrote to Prime Minister Spencer on 14th February 2006 stating that, having reviewed the entirety of the matter, they were satisfied that there had been substantial, major irregularities in the mechanisms used in the original acquisition, which effectively rendered the process null and void. That as a result of this letter, he obtained a meeting with the Prime Minister in August 2006. That on 25th August 2006 he and his daughter actually met with the Attorney General. That Minister Baptiste joined the meeting towards the end and the Prime Minister was consulted via teleconference. That intense negotiations were then conducted and, arising from the meeting, several issues

were settled. That he wrote to the Prime Minister on 28th August 2006 recounting his understanding of the consensus arrived at and outlining three acceptable options for payment of compensation for the 100 acres of land that it was agreed that the Government would retain.

[29] The Defendant also gave evidence via his Witness Statement of other correspondence exchanged between him and members of the Government, of cautions taken out by him and of meetings in which he participated, including with Prime Minister Spencer, and stated that these negotiations were all held in good faith between him and the Prime Minister and his Ministers. That at no time was the Claimant ever involved. That on 11th December 2007 a formal agreement was executed for the payment by Government of compensation of \$15.5M to the Estate represented by the Defendant, in addition to the 38.5 acres of land which had been returned to the family.

[30] The Defendant stated that the two proposals allegedly presented to the Prime Minister during the ALP - led Government were for a cash payment only, in the first instance, and for 25 acres of land only, in the second instance, and that these proposals bore no relation to the agreement that he personally arrived at with the UPP - led Government. That the final agreement arrived at with Government and indeed the intense negotiations leading to it bear no relation to what was prepared by the Claimant to the new Government. That having finally agreed and achieved compensation for his family through his own hard work, he was taken aback when the Claimant approached him one day and, after congratulating him on his achievements, inquired about his money or land as per the agreement. That he reminded the Claimant that the settlement was not achieved by him nor based on his representations to the Cabinet and that he was prepared to pay him for writing the letters on his behalf and asked him to submit a bill for those services. That he was dumbfounded that the Claimant had surfaced or appeared out of the woodwork, having not been around since he advised him that his services were no longer required. That the Claimant certainly had no involvement whatsoever in any discussions which he (the Defendant) held with the Government leading to the return of land and the payment of compensation.

- [31] Under cross examination, the Defendant testified that he came to know the Claimant in 1998 – 17 years after his family's land had been acquired by Government. That in those 17 years he had made various attempts to get proper compensation for his family's land. That he had engaged about 6 lawyers in the process, including Sir Fenton Ramsohoye and Mr. Harold Lovell. That in 1998 he decided to enter into an agreement with the Claimant for the Claimant to try to get compensation for him. That when he entered into the agreement with the Claimant he did not think that 16.5% was a high commission for getting his land back. That he felt that a fundamental injustice had been done to his family by the Government and he considered that compensating the Claimant in the amount of 16.5% would have been a small price to pay for undoing that injustice. That according to his evidence he did not stop the Claimant from working at any time prior to the 2004 general elections.
- [32] The Defendant testified that the morning after the general elections he realized that his party had won the elections, that his good friend (Mr. Baptiste) had won the seat and was now a Minister of Government. That from then he did not need the Claimant to talk to members of the Government for him, all of them knew him and he knew them. That sometime towards the end of 2005 – almost one and a half years after his party won the general elections – he told the Claimant to stop working on his matter. That it was in October 2005 he told the Claimant that his services would no longer be required. That it is not correct that in April 2005 he and the Claimant were informed that Cabinet had approved the return of 38.5 acres of land. That he agrees that that the return of 38.5 acres was part of the Claimant's proposal.
- [33] The Defendant testified that he does not agree that Mr. Baptiste told him and the Claimant in April 2005 that Cabinet had agreed to return the 38.5 acres to his family, then he said that Mr. Baptiste had told him so in April 1985 and that the cash aspect would have to be negotiated. The Defendant denied that he ever gave the Claimant any money whether in or after April 2005.
- [34] The Defendant testified that it was not until 2006 that he told the Claimant about his daughter's discovery of the irregularity of the acquisition of his family's land. That he never

wrote to the Claimant telling him to discontinue his dealing with the matter, but he did so verbally and that it was the Claimant who told him that he (the Claimant) was not getting anywhere with the Bird Government.

[35] The Defendant testified that he went to the Claimant in April 2004 to ask the Claimant to prepare the letter for him. That he has looked at the proposal that was prepared by the Claimant in April 2004 and he does not agree that the proposal is the same as the final settlement with Government. That it is significantly different. That he agrees that the proposal prepared by the Claimant included the return of 38.5 acres of land, which is also part of the final settlement. That he agrees that there is a cash component in both the proposal prepared by the Claimant and in the final settlement and that the difference between the two is that the final settlement is \$2.5 million more. That there is another difference - the waiver of 7.5% tax in relation to the transfer of lands by family members, which is in the final settlement but not in the April 2004 proposal.

[36] The Defendant denied that when he saw the size of the money he was going to get he forgot the person whom he had turned to in his time of need. He testified that the Claimant realized that the whole thing was over because the Claimant told him that he could not get anywhere with the Government. That he did not need to tell the Claimant that the agreement was at an end because the Claimant had exhausted all his attempts and was not getting through with the Government.

[37] On this evidence and on the documents contained in the Core Trial Bundle of Agreed Documents filed on behalf of the parties, the Court is tasked with the responsibility of determining whether there was in existence a valid and subsisting contract between the Claimant and the Defendant which was breached by the Defendant when he failed and/or refused to pay to the Claimant a commission of \$3,026,014.20 or a like amount as reasonable compensation for work done by the Claimant at the request of the Defendant.

[38] The Claimant avers in his Claim Form that the contract which he seeks to enforce was an agreement in writing made between the Claimant and the Defendant on 27th October 1998.

In his Statement of Claim attached to the Claim Form the Claimant avers that the agreement between the parties was reduced into writing on 27th October 1998 in the form of an authorization issued to the Claimant by the Defendant, which authorization evidenced the agreement of the parties. In his Witness Statement the Claimant avers that in early October 1998 he was approached by the Defendant who sought his professional services to negotiate fair and just compensation relative to 138 acres of land compulsorily acquired by Government in 1981 from the Estate of his late father and for which the Government had paid US\$1million and he agreed to undertake that task for a fee of 16 ½% of the total sum of the settlement he obtained from the Government on behalf of the Defendant. He averred that, to be sure that he would be paid, he told the Defendant they should sign a document authorizing him to act on the Defendant's behalf and stating what his fee would be and the Defendant agreed and that on 27th October 1998 the Defendant brought him the original of a document signed by the Defendant to that effect which he (the Claimant) kept.

[39] The Defendant denies the existence of a written contract between the Claimant and himself but admits that in or about 1998 he had authorized the Claimant to act on his behalf in negotiating with the Government of Antigua and Barbuda led by Prime Minister Lester Bird with a view to obtaining appropriate compensation in respect of his family's land compulsorily acquired by the Government and that the authorization was reduced to writing as evidenced by the document dated 27th October 1998.

[40] On the evidence, the Court does not find that there was a written contract between the parties, but the Court finds that there was a contract between the Claimant and the Defendant under the terms of which the Claimant was to negotiate with the Cabinet of Ministers of Antigua and Barbuda a settlement of an outstanding claim by the Estate of Ernest V. Henry, represented by the Defendant, for fair and just compensation in respect of 138 acres of land acquired by the Government in 1981, in consideration for which the Defendant would pay the Claimant a fee of 16 ½% of the total amount which the Claimant is able to negotiate on behalf of the Estate. The Court also finds that the contract between

the parties was evidenced in writing by the authorization signed by the Defendant and countersigned by Mr. Harold Lovell on 27th October 1998.

- [41] There is a dispute on the evidence as to whether the contract was subsisting by the time that the Government agreed to or did settle the claim. The Claimant alleges that it was, because it had never been terminated, while the Defendant alleges that it was no longer subsisting, because it had previously been terminated by verbal notice given by him to the Claimant, which termination was accepted by the Claimant and/or that the Claimant had conceded – by both words and actions or, in this case, by inaction – that he had failed to perform the contract and it was therefore terminated by breach.
- [42] The Court does not however find it necessary to resolve the issue as to whether the contract was still valid and subsisting between the parties by the time that Government agreed to or did settle the claim, because the Court finds, on the evidence, that the Claimant had not performed his obligations under the contract and was not therefore entitled to payment thereunder.
- [43] The contract clearly obligated the Claimant “to negotiate with the Cabinet of Antigua and Barbuda a settlement in respect of [the Defendant’s] outstanding claim for fair and just compensation in respect of 138 acres of land acquired by government in 1981 from the Estate of Ernest V. Henry (Sr.)” and obligated the Defendant “to pay [the Claimant] as his fee, 16 ½% of the total sum which he is able to negotiate on behalf of the estate.” The evidence is that the Claimant wrote a letter dated 3rd November 1998 to the Prime Minister of Antigua and Barbuda at that time seeking “to meet with you and your Cabinet to review the claim and or to finalize a settlement.” The evidence is that by the time the life of that Cabinet ended in March of 1999 the Claimant had not succeeded in meeting with them “to review the claim or to finalize a settlement” or “to negotiate...a settlement in respect of [the Defendant’s] outstanding claim.” The evidence is that the Defendant wrote another letter to Prime Minister Bird, now heading a Cabinet of Antigua and Barbuda constituted after the March 1999 general elections. That letter, dated 26th November 1999, was a “follow-up to my request for dialogue with you and your cabinet concerning the claim of Mr. Ernest

Henry (Jr.) regarding the government's acquisition of the Ffryes Estate in September of 1981." The evidence is that by the time the life of that Cabinet ended in March 2004, as did the tenure of Lester Bird as Prime Minister of Antigua and Barbuda, the Claimant had not succeeded in his attempts "to negotiate with the Cabinet of Antigua and Barbuda a settlement in respect of [the Defendant's] outstanding claim for fair and just compensation in respect of 138 acres of land acquired by government in 1981 from the Estate of Ernest V. Henry (Sr.)." Thereafter, the Claimant's leverage derived from – to quote his Witness Statement – "reasonably good relations with the Prime Minister and members of the Cabinet which [he] felt would assist [him] in advancing the matter for the Defendant" was extinguished and replaced by the Defendant's own connectedness with the new Prime Minister and members of his Cabinet. The evidence is that, from that time onwards, the Claimant's only involvement in the matter was that - at the request of the Defendant - he drafted a letter dated 17th April 2004, with an accompanying background summary and settlement proposal (prepared by him on information furnished by the Defendant) which letter the Defendant signed and delivered to Prime Minister Baldwin Spencer. There followed several letters, meetings, negotiations and other activities, between 2004 and 2007, towards securing a settlement of the long-standing dispute between the Government of Antigua and Barbuda and the Estate of Ernest V. Henry, without any involvement of the Claimant.

- [44] Whether the terms on which the dispute was finally settled - as per decision of Cabinet of 6th June 2006 to re-vest 38.44 acres of land to the Estate of Ernest V. Henry and, as per decision of Cabinet of 26th June 2007 to pay the sum of \$15.5 million to the Estate of Ernest V. Henry as the balance due to the Estate as full, complete and satisfactory compensation - bore any relation to any of the settlement proposals accompanying the letter to Prime Minister Spencer dated 17th April 2004 and drafted by the Claimant has no bearing on the fact that, on the evidence, the settlement of the outstanding claim of the Estate of Ernest V. Henry was not negotiated with the Cabinet of Antigua and Barbuda by the Claimant and he has no claim therefore to a fee of 16 ½% of the total sum not negotiated by him.

- [45] It is not disputed that the Claimant did do some work and expended some energy and effort and even possibly exhausted his fund of goodwill with the former Prime Minister of Antigua and Barbuda in an effort to try to negotiate with the Cabinet of Antigua and Barbuda on behalf of the Defendant. His efforts however did not produce the intended results, not even succeeding in affording him an opportunity to negotiate with the Cabinet, and the nature of his contract with the Defendant was such that one small effort on his part may have entitled him to a few million dollars if it resulted in a successful negotiation of a settlement but, conversely, numerous efforts on his part not leading to a successful negotiation of a settlement entitled him to nothing.
- [46] In the circumstances, the Claimant's claim against the Defendant for the sum of \$3,026,014.20, together with interest and costs, is hereby dismissed.
- [47] In his Defence, the Defendant had conceded that the Claimant is entitled to the sum \$1,500 for writing letters and a proposal and so the Court awards him this amount on the basis of the Defendant's concession.
- [48] The Court exercises its discretion in the circumstances of this case to make no award as to costs.



Mario Michel
High Court Judge