

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA and BARBUDA

CLAIM NO. 2006/0638

BETWEEN:

ROBERT "PIO" BAIRD

CLAIMANT

And

- (1) CLANCY MACK as Trustee of the Antigua and Barbuda Football Association;
- (2) HENRY GRE AUX as Trustee of the Antigua and Barbuda Football Association;
- (3) St. CLAIRE CRUMP as Trustee of the Antigua and Barbuda Football Association;
- (4) MERVYN RICHARDS as President of the Antigua and Barbuda Football Association;
- (5) GORDON DERRICK as General Secretary of the Antigua and Barbuda Football Association.

DEFENDANTS

APPEARANCES:

Loy Weste and Arthur G.B. Thomas for the Claimant

Kendrickson Kentish for the Defendants

.....
2010: January 25;
2010: February 2.
.....

JUDGMENT

1. Harris J. The Claimant, a well qualified and certified football coach, executed a "*fixed term*" contract document with one, Chet Green, the Secretary of the Antigua and Barbuda Football Association (the "*Association*") and Ralph Potter the then President of the Association; which provided for the claimant to serve the Association as a National Football Coach for the period commencing the 15th February 2003 to the 31st of December 2007. The contract document provided for the payment of a stipend of EC\$1000.00 per month along with the provision of certain equipment and wear for the use of the football coach, Robert "Pio" Baird, the claimant in this matter. The Antigua and Barbuda Football Association (the "*Association*") is an unincorporated body, but registered as a Friendly Society under the Friendly Society Act Cap 184 of the 1992 Revised Laws of Antigua and Barbuda. The claimant narrowly alleges that; "*In breach of the said*

agreement, the Defendant Association, by newspaper article dated Friday, the 27th day of August, 2004, wrongfully, and in repudiation of the said fixed term agreement, terminated the Claimant's employment and refused to employ him after that date." The claimant is claiming loss and Damage.

2. The Defendant denies that the Association contracted with the claimant as alleged and contends that the person who entered into the contract on behalf of the defendant Association had no such authority so to do, he not having been authorized by the Executive Committee as required by the constitution of the Association. The Defendant contends that there was in effect no such contract of employment in force as alleged. The Defendant contends that the claimant was hired from time to time for specific assignments and paid accordingly.
3. The Claimant claims Special Damages for; (i) loss of Salary from march 2003 to August 2004 less the sum of EC\$5000.00 which was paid to him, to a total value for that period of EC\$14,000.00; (ii) loss of salary for the unexpired portion of the contract to the value of EC\$40,000.00; and (iii) the equipment allowance valued at EC\$1,250.00. The Claimant also claims Damages for wrongful dismissal from the defendant's employment as National Coach. The Claimant's case was supported by evidence of the claimant and Mr. Ralph Potter. Although Mr. Chet Greene submitted a witness statement he did not appear to give evidence as required. No reason was supplied for his absence. The defendant's case was supported by the evidence of Mr. Gordon Derrick.

THE EVIDENCE – THE FACTS

4. The facts of this case in so far as is pertinent to the statement of case and issues identified and set out below are, that the Association was duly registered as a Friendly Society and in the year 2002 - there is no dispute over this fact in the pleadings – had a duly elected executive committee in place. The Annual General Meeting (the "AGM") of the Association, for the election of a new executive committee was in the normal course of things due to be held at the end of that year, on either the 29th or 30th of December 2002.¹ Due to certain issues being raised by some of the Association's membership as to the voting rights of certain classes of members, the AGM was postponed to a later date pending legal advice. I accept these facts as true.

¹ See the cross examination of Ralph Potter, the then President of the Antigua and Barbuda Football Association

5. Mr. Ralph Potter, The then President of the Association, in his evidence testified that he does not recall the exact date the next meeting was held, but it was in February 2003 and it ended in confusion and was aborted.²
6. I find, that the said AGM referred to by Mr. Potter above, took place on the 11th of February 2003 as suggested by counsel for the Defendant, but due to certain disruptions of the meeting, it was aborted and adjourned³. Mr. Ralph Potter, the President of the Association, testified that by way of a motion at the said aborted meeting moved by him, he formed an interim executive committee to run the affairs of the Association. Whatever may be the significance (or necessity) of that act, the executive committee that had held over from 2002 remained in office throughout the month of February 2003 and beyond. This executive committee included Ralph Potter as the president of the Association, and Chet Greene as the General Secretary (the “Secretary”) presumably, along with others.⁴
7. Mr. Potter testified, at Para. 6 of his witness statement, that at a duly convened executive meeting in February 2003 the Association took an executive committee decision to employ the claimant as a National Football Coach from the 15th February to the 31st December 2007 for the stipend of EC\$1000.00 a month and other benefits. At Para. 9 of Mr. Potters witness statement; he confirms that Chet Greene was duly authorized by the executive committee of the Association to execute the contract employing the claimant as a National Coach on the terms as stated in the exhibited contract. Mr. Potter is the only witness giving evidence of a committee meeting in support of the validity of his own role in the execution of the subject contract. It is somewhat self serving, and although it is admissible evidence, its weight is affected in the peculiar evidential circumstances of this case. It is not disputed that the contract was executed.

² There is some confusion in the evidence over whether this was in 2002 or 2003. See the summary of Mr. Derrick. If I am correct, I believe the misstatement is inadvertent and both parties are speaking of the same events and clearly, the same sequence of events. Neither party has taken the point and I do not propose to do so either.

³ Mr. Potter testified that the meeting could have taken place on the 11th but he does not recall the exact date. The claimant said that he recalled the meeting took place before the signing of his contract on the 15th February 2003.

⁴ No issue has been taken with respect the number of members in the executive at that time.

8. The evidence contradicting the occurrence of the executive meeting and the outcome of that meeting is the evidence of Mr. Derrick, the new Secretary of the Association elected since April of 2004. He said that having searched the minutes of the Association; he had not found any record of the executive authority to employ the claimant as alleged.⁵ He testified that upon assuming office in 2004, his executive knew nothing of the contract with the claimant. No evidence was led from Mr. Potter either in chief or in cross-examination as to whether Minutes were made of the executive meeting and/or their whereabouts.⁶ Further, the claimant has not alleged nor has Mr. Potter testified, that the alleged executive committee meeting of February 2003 authorizing the engagement of Mr. Baird, was reduced to minutes and transcribed in the Association's Minute book, in the manner and by the Secretary as set out in clause 25 of the Constitution of the Association.
9. Neither Mr. Derrick nor Mr. Potter have produced for the Court, the documents for the period in which the minutes would be expected to reflect the executive's deliberation and/or decision to contract with the claimant as alleged. From the Statement of Case Bundle, it appears that the claimant did not request these minutes pursuant to an application for Specific Disclosure. Neither, it appears, did it request of the Defendant, information pertaining to the minutes, its contents and its whereabouts, pursuant to Part 34 of the Eastern Caribbean Civil Procedure Rules ("CPR2000") - "REQUESTS FOR INFORMATION". The long and short of it is that the claimant has not sufficiently sought out this very critical document – the Minutes – in support of its case and to the satisfaction of the Court. Further, no evidence was led by the claimant of particulars of this February 2003 committee meeting that would imbue it with actuality; such as who was present, who took the minutes, who voted, whether the vote was unanimous, whether and what powers were delegated and to whom, where the meeting was held, what discussions took place prior to the decision, who said what, and the like. All of these circumstances, in this case, in my view tend to negative the presumption of regularity in the affairs of the Association's committee at the material time.

⁵ Para. 5 of the witness statement at pp21 of the Witness Statement Trial Bundle.

⁶ None of the other executive members, of February 2003, were brought to testify as to the convening of the meeting or existence of minutes of that committee meeting or testified at all.

10. On the 15th day of February 2003, the claimant executed a contact document for the provision of football coaching services to the Antigua and Barbuda Football Association on the terms set out earlier. Chet Greene, the Secretary of the Association, executed the said agreement along with a witness in one, Ralph Potter, the President of the Association, both purporting to act for the Association. The two executive committee members were required to have the approval of the executive committee to effect this contract and bind the Association. The Association's affairs are managed by the Committee and not any individual committee member⁷. Contrary to the Claimant's assertion, I find on the evidence, and on balancing the burden and standard of proof with the evidence, that the executive committee had not, in fact, in the month of February or at all, approved the contract or authorized the said two members to enter into the subject contract with the claimant.⁸

11. The claimant, it was suggested in cross examination, was retained on an *ad hoc* basis for various coaching assignments.⁹ I note that apart from reference in paragraph "2" of the claimant's witness statement, of being selected by the Association to travel with the national football team to Trinidad for the Gold Cup, the only other references to this relationship with the Association was his assignment; (i) as a the Goal keeper Coach for the youth under twenty team and subsequently, (ii) to work as the coach of the female team; both of which were during the period of the new executive committee. He was paid sporadically for his services for sure and the claimant has produced evidence of the sporadic payment. The claimant's services however, were used in a manner that does not appear entirely inconsistent with that which is contemplated or in any event permitted, by the contract document signed by himself, Chet Greene and Ralph Potter on the 15th of February 2003. The claimant testified that he carried out his duties as contracted. In August of 2004, he said he found out of his dismissal by a news paper article of the 27th of August. He says that up to date, he has not received a letter of dismissal. He said that upon the election of the new executive, he had spoken to the new President of the Association, one Mervyn Richards, several times

⁷ See clause 17 and 24 of the Constitution of the Association (pp15 Exhibit Document Bundle).

⁸ The claimant has failed to prove the existence of the executive meeting and/or the approval of the said executive for the employment contract with the claimant and the terms and conditions of the contract.

⁹ No evidence has been led or case pleaded with respect to the terms and conditions of those agreements.

concerning his coaching assignments and that on several occasions the President made reference to the 15 February contract. On the installation of the new executive in April of 2004, the claimant said he presented himself to the new executive. He did not provide any particulars of this presentation such as when, where and to whom exactly did he present himself to and how was this done. The counsel for the defendant put it to him that he did not at any time present himself to the executive as he testified to in his statement. Further, he testified that he had spoken to Mr. Richards about the non-payment of his contractual stipend. On cross examination, the claimant acknowledged that he did not make these assertions in his statement of case or witness statement. The evidence in chief of the claimant does in fact contain a statement to the effect that the claimant did speak with the President about his outstanding payments under the contract¹⁰.

12. Looking at the said newspaper article, one cannot construe that to be a dismissal in itself. The evidence of the claimant that the President of the Association told him subsequently that he was dismissed has not been contradicted. In any event the defendant has not denied that the services of the claimant are no longer utilized. What the defendant avers and testifies to, is that the Association had retained the claimant as Coach for the National female team in accordance with the standard practices of the Association – “a one off arrangement”¹¹ - independently from and without knowledge of, the 15th February 2003 ‘contract’, and this one-off arrangement was terminated in August of 2004¹². There is a very big gap between one-off arrangements and a 4 year contract. I accept the usual contractual basis for the Association as the one-off arrangement as being more realistic particularly when one considers, on the evidence, that the Association does not appear to have an independent source of income.

13. The evidence is that the claimant carried out his duties competently and this is not contradicted by the evidence of the Defendant. There is no evidence in support of any of the contractual conditions for dismissal of the claimant under the ‘contract’ if that contract is valid.¹³ The claimant testified that after the newspaper reference to the termination of his contract, he presented himself to the

¹⁰ See para 17 of the witness statement in Trial Bundle.

¹¹ See para 7 of the witness statement of Gordon Derrick.

¹² See para. 7 and para. 8 of the witness statement of Gordon Derrick.

¹³ The contract expressly sets out the specific grounds for dismissal.

President of the Association, Mr. Mervyn Richards, who informed him that the defendant Association had requested the termination of his Employment Agreement. The defendant has not denied this in evidence. I take this to be the critical date of the “dismissal”¹⁴. Here again, *the shoe being on the other foot* now, no evidence has been led as to the executive committee authority of Mervyn Richards, to terminate any contract. The claimant did not seem to have questioned it and has not taken the point in his statement of case. In these circumstances however, could the claimant reasonably have considered himself as being dismissed on the strength of the oral representations of Mervyn Richards? The defendant contends and it is not denied, that the claimant, as I understand the evidence, did not personally or formally present himself to the committee as a body, after he perceived himself as having been dismissed in August of 2004 or after his conversation with Mervyn Richards pertaining to the dismissal. What communication took place after, is at least in part chronicled in the various letters exhibited in the trial Bundle. The claimant testified further that he was prevented from continuing his work with the National Female team¹⁵. There is no dispute that the claimant’s services with respect to the female team, was terminated.

14. No doubt, the Association was beset with administrative problems and it appears, leadership contentions. The claimant in cross examination testified that *“There was conflict and problems with respect to the eligibility of members to vote. There were two rival groups vying for election to the executive.”* The conflicts and problems reached the point that in November of 2003, the international football body, FIFA, caused a temporary Normalization committee to be put in place to continue the operations and functions of the Association until the next Association elections. The evidence is that the Normalization Committee was put in place to run the affairs of the Football association and the elections took place the following year, in April of 2004. The evidence is that the very members who had been part of the existing executive committee of the Association from February 2003, were included in the new and temporary Normalization committee, including Ralph Potter and Chet Greene. The elections in April 2004 referred to in the evidence presumably brought an end to the Normalization Committee, the turmoil, and did in fact bring in a new

¹⁴ See para 36 post.

¹⁵ There is no dispute that the claimant was retained to coach the National Female team. There is an issue over what contract retained him for that role.

Executive Committee. The legal status of the Normalization committee is questionable, but does not require resolution at this time in order to resolve the other and pertinent issues now before the Court. I accept as true, the evidence referred to in this paragraph

ISSUES¹⁶

15. Several issues arise from the facts and circumstances of this case;
16. Whether at the date of execution of the contract of employment dated the 15th day of February, 2003, there was lawful executive committee in place for the Association, and that Chet Greene and Ralph Potter were part of the said executive;
17. Whether the management committee convened a meeting and or otherwise lawfully took a committee decision on behalf of the Association to contract with the claimant on the terms and conditions as alleged and so authorized Chet Green and Ralph Potter to execute same.
18. Whether, even if Chet Greene and Ralph Potter as committee members or otherwise, were not authorized to execute the contract on behalf of the Association; that the Association is bound by the terms of the contract on the basis that Chet Greene and Ralph Potter acted with the ostensible authority of the Association.
19. Whether, if the contract of the 15th February was valid or the Association otherwise bound by the terms of the contract, the Defendants acted in breach of the contract by terminating the claimant's services under the contract, before the expiration of the contractual term.
20. Issue "3" identified in the claimant's Pre-trial Memorandum¹⁷ is trite I would think, and answered in the affirmative. I do not accept the issue "5" identified in the said Pre-trial memorandum and couched as it is, as relevant to the considerations left to be determined in this matter¹⁸.

¹⁶ Taken substantially from the Claimant's Pre-trial memorandum at pp. 78 of the Statement of Case Trial Bundle.

¹⁷ Ibid.

¹⁸ If the contract was void, then, separate from the concept of *ostensible authority*, the awareness of the said contract or contractual terms by the new executive cannot in any event create a new contract or affirm an existing one without the formal consent of the executive committee. The issue with respect to proof; i.e. the convening of an executive committee meeting, its decisions and the production of the minutes of that executive committee meeting apply to this issue also.

ISSUE 1: Whether at the date of execution of the alleged committee meeting and the date of the contract of employment dated the 15th April 2003, there was a lawful executive committee in place for the Association, and that Chet Greene and Ralph Potter were part of the said executive

21. I find that there was a lawful executive committee in place from the commencement of 2003 to beyond the 15th of February 2003.

22. Firstly, there is no evidence that there was not a functioning committee - albeit not fully so - during the relevant period. Further, in my view there is no sufficient evidence of any patent matter that disqualified the existing committee from holding office during the material time. As I have found above, the committee of 2002 held over into 2003 and indeed until the holding of the next AGM and elections thereto.¹⁹ Clause 22 of the Association's constitution provides for the committee holding office until the next annual general meeting. The evidence is, at what appears to have been an attempt at an AGM on February 11th, or in any event at a date prior to the signing of the contract of the 15th of February 2003, the meeting was aborted due to some disorder and the President, by way of his Motion, adjourned the meeting. The editors of Halsbury's Laws 4th edit, Vol. 6, CLUBS, at Para. 148, note that although the President (or Chairman) has no authority to terminate a meeting at his own will and pleasure²⁰, he does have the "*...inherent power to adjourn the proceedings in the event of disorder... for no longer than is required in the circumstances for the restoration of order.*" The circumstances prevailing at the time as testified to by Mr. Potter and to a lesser extent, the claimant, were among other things, a contention with respect to the voting rights and classes of membership. These are not matters that were likely to have been resolved on the day of the meeting or even shortly thereafter. Indeed, the evidence suggest that much dislocation took place in the Association before and thereafter to the point that the world governing body for football, FIFA, had to step in and cause to be put in place the Normalization committee to manage the affairs of the Association. The next annual general meeting was held in April of 2004²¹.

¹⁹ See paras. 4 and 6 ante.

²⁰ See the case there cited; National Dwelling Society v Sykes [1894] 3Ch 159 at 162.

²¹ Following the dicta of Tulloh J. in Brathwaite v Mayers (1977) 30 WIR 51, this next AGM would be a continuation of the February 2003 aborted AGM. Nothing turns on this however, for our purposes here.

23. The Association is an unincorporated body, but by statute, can sue and be sued in the manner provided in the Act. The principles with respect to determining the extent of the term of office of the committee applicable to Companies are in large part supported by the same logic that applies to the unincorporated bodies, that is; administrative necessity and/or logic.²² There is no statutory bar to the committee holding over as it did in this case, neither is there any impediment to this in the constitution of the Association. Further, the Law on the management and meetings of unincorporated bodies supports the actions and the lawful status of the committee at the material times.

ISSUE 2: Whether the management committee convened a meeting and or otherwise lawfully took a committee decision on behalf of the Association to contract with the claimant and on the terms and conditions as alleged and so authorized Chet Greene and Ralph Potter to execute same.

24. This second issue is answered in the negative. The Court is not satisfied, on a balance of probabilities, that the committee meeting either; (i) took place, or if a meeting did take place, that; (ii) a decision was taken at that management committee level to contract the services of the claimant as alleged; or (iii) Chet Greene and/or Ralph Potter were delegated the authority to execute the said contract with the Claimant on behalf of the Committee or Association.

25. My findings of fact in relation to the non production of the minutes of the alleged executive committee meeting, the absence of evidence from the other members of the committee, the absence of details of the alleged meeting are all relevant to my finding on this issue. Let me say something further on the Minutes of the meeting. The keeping of the minutes of proceedings of all general and committee meetings is not merely a convenient and useful exercise, but one provided for, at the very least by strong implication, in clause 25 of the Constitution of the Association.

26. The section reads as follows: "*The Secretary shall keep the minutes of the proceedings of all general and committee meetings which minutes shall be transcribed in the Minute book. The*

²² See Sir Denys Williams CJ in Re Barbados Cricket Association(1999) 58 WIR 67.

Secretary shall keep the papers and documents of the Antiguan Football Association and shall receive such remuneration as the committee shall determine.” (Emphasis mine).

27. As I noted earlier, the claimant has not alleged nor has Mr. Potter testified, that the executive committee meeting authorizing the engagement of the claimant was reduce to minutes and transcribed in the minute book. This clause 25 requirement in my view places an added expectation on the claimant to produce evidence of the February meeting by way of the minutes. The evidence does not disclose the claimant utilizing the legal procedures available to it in obtaining this information or documents²³ and, as a consequence, it cannot now lie in the mouth of the claimant, that that information was and is in the possession and control of, or peculiarly within the knowledge of, the Defendant Association.

28. Now, to be clear, the production of the minutes and/or testimony of the particulars of the circumstances²⁴ of the meeting are not the only source of evidence of a meeting and decisions there taken, but, in my view , in the circumstances of this case, they are weighty factors in determining the issue under consideration. The defendants have disputed the existence of the meeting, proved the absence of the minutes and disputed the authorization of the two committee members to contract with the claimant.

29. I take it as given, that Chet Greene and Ralph Potter could not unilaterally contract with the claimant and bind the Association or the committee of the Association²⁵. The committee must authorize and direct the action of the members or employees of the committee. The management of the affairs of the committee is provided for in the Association's constitution and helpfully, given detail and set out in Halsbury's Laws, 4th ed. thus: *“The management of the affairs of a member's club is generally entrusted to a committee of the members elected in accordance with provisions in the rules. The extent of the powers of the committee to bind members, whether as between*

²³ See para. 9 ante.

²⁴ Ibid..

²⁵ Save in circumstances where the existence of an *ostensible authority* can be established. See para 32-35 *post*.

themselves or as regards contracts with tradesmen and others depends upon the rules. In the absence of a rule providing that a certain number is to form a quorum, all the members of the committee must join in the exercise of any powers conferred upon them. Sometimes the rules provide for the appointment by the committee of sub-committees for specified purposes, and may authorize the committee to delegate its powers to such a committee. “²⁶ There is the memorandum from Chet Greene dated 18th November 2003 which speaks to ‘reactivating contractual arrangements’ between coaches and the Association. The memo is unclear and does not refer to what contracts – for instance; the 15th February, ad hoc or other short term contracts. The date of the memo, November 2003, coincides with the installation of the legally questionable Normalization Committee of which Chet Greene was a member. All the same, the parties have not taken the point with respect to the legality of the Normalization committee. What the memo does suggest is that there was a period of inactivity in the formal relationship (in whatever myriad forms) between the coaches and the Association. Further evidence is required to give this memo more meaning and to assist the Court in its application to the facts of this case. The maker of the document regrettably has not been called as a witness. Further, the claimant has not assisted the court by testifying as to his understanding of this document, addressed to him and presumably received by him.

30. The Association's management committee is created by clause 17 of its Constitution and the powers to manage its affairs and to create sub-committees conferred on it by virtue of clause 24. Suffice it to say, without the committee joining in the exercise to agree terms and to confer the authority on Chet Greene and Ralph Potter to contract with the claimant as alleged, they would not have the authority to do so. In this case, the assertion by the defendant's to the contrary and in the absence of proof of the committee meeting and in the absence of sufficient evidence of committee directives for the two gentlemen to contract with the claimant as alleged and in all the circumstances in this case, on the balance of probabilities, I find Chet Green and Ralph Potter did not have the authority to execute the subject contract with the claimant on behalf of the Association.

²⁶ 4th edit, Vol. 6 para. 138.

31. The editors of the Halsbury's Laws 4th edit, Vol. 6 at Para. 149 go further on the question of employment of persons by an unincorporated association including a Friendly Society and state that: *"The club rules may contain specific provisions regarding the employment of staff, but if they do not then the management committee of an unincorporated members club may be so empowered by implication. As a result members of the committee may become personally liable for the remuneration involved and may not be entitled to be indemnified by individual members of the club. If an individual member, for example the chairman, enters into a service agreement on behalf of the club he should be so authorized by resolution of the committee in order to safeguard his right of indemnity by other members of that body."* These statements of the law in the two quotes above (see para 29 ante) emphasize the duty of care a committee member must exercise in his affairs and the fundamental role the committee would have had to play in the execution of the alleged contract with the claimant, a role I find, the claimant has not proved in this matter. National football is serious business required to be operated in a transparent and structured manner. The committee is required to scrupulously adhere to the law and its constitution so as to withstand international scrutiny, maintain its administrative integrity and advance that great sport; football. The last issue (Issue 3) is one raised, in my view, only on the closing submissions of the claimant and not in its statement of case.

ISSUE 3: Whether, even if Chet Greene and Ralph Potter as committee members or otherwise, were not authorized to execute the contract on behalf of the Association, that the Association is bound by the terms of the contract on the basis that Chet Greene and Ralph Potter acted with the ostensible authority of the Association.

32. This point is not expressly pleaded. The broader kindred issue raised and pleaded in this case is whether the Association approved the terms and contracted with the claimant as alleged and whether it lawfully did so through its committee members, Chet Greene and Ralph Potter, the Secretary and the President respectively. In essence the role allegedly played by the two members of the committee is one of agent. The committee is the Principal. The onus lies upon the person dealing with the agent to prove either real or ostensible authority. Is the existence of the ostensible authority one to be found on the evidence at trial and not necessarily first pleaded? In

the circumstances of this case failing to plead the relevant facts in support will run afoul of the rule 8.7(1) of the CPR2000; "Claimant's duty to set out case".²⁷

33. Having heard the evidence, the claimant is calling upon the Association; or the Principal if you will, to accept liability for the acts of two of its members who purported to act for the Association and indeed did on the face of the document, sign the contract on behalf of the Association. In the appropriate circumstances the defendant Association would be *estopped* from denying its liability for the acts of its agents (if that is what they are). This estoppel as it were, arises where a person (the Association) has led another (the claimant) to believe that he has authorized a third person (Chet Greene and Ralph Potter) to act on its behalf, and that other, in such belief, enters into transactions with 3rd person within the scope of such ostensible authority. Firstly, in my view the claimant has failed to prove, for the reasons provided above²⁸, that the two members of the committee had real authority (as opposed to ostensible authority) to contract on behalf of the Defendant Association. On the facts of this case, my finding is that the two persons cannot be held to be the agents of the Association with real authority for the purpose for which they acted.

34. With respect to whether the two committee members had the **ostensible authority** to contract on the Association's behalf (as opposed to the real authority), the claimant has simply not raised or otherwise signaled his intention to pursue this issue in its statement of case such that the defendant would have been put on notice to answer it in its statement of case. In fact the claimant did not in its statement of claim even mention the name of Chet Greene or Ralph Potter nor the circumstances under which the contract was executed by these two gentlemen. Further, if it is that the defendant's defense gave rise to the need for the defendant to plead the ostensible authority, the claimant simply failed to plead it as part of its case, in its reply (A reply was not filed)²⁹. I would not, from the claimant's statement of case have anticipated the claimant raising the issue of the ostensible authority of the two committee members to contract on behalf of the Association. Further, in the claimant's Pre trial memorandum, this issue has not been identified and set out as an issue before the court. In examination and cross examination, the witnesses were not

²⁷ See also the case of McPhilemy v Times Newspaper Ltd. [1993] 3ALL ER 775.

²⁸ See para 24-31 ante.

²⁹ See Trial Bundle.

specifically examined as to factors relevant to agency and ostensible authority. Finally, in the claimant's legal submissions after trial, it was first raised as an issue to be dealt with by the court. I find that the claimant cannot now raise this issue for determination by the court. The case for the claimant and issues thereto are raised in the pleadings. (See the *Boyea* case out of St. Vincent and the Grenadines, per Barrow J.A.). If I am wrong on this point, I resolve this issue as follows;

35. The claimant by his own admission was aware of the controversy within the Association. He was aware of the aborted meeting prior to the signing of the contract.³⁰ He was a football coach for a long time and clearly involved in the business of football in Antigua and Barbuda for some time. He has to take some responsibility for his own protection. He has to ensure that he is contracting with a lawful entity. In the circumstances prevailing in the business of football at the time, he would have entered into the contract surely, with some doubt as to the bona fides of the executive committee, far less anyone purporting to act on their behalf to execute a 4yr contract, even in the person and rank of the two subject committee members; and I so hold. To the extent that the controversy within the Association was in part related to leadership issues, the two subject committee members would have been in the vortex of the controversy. In any event, I do not find that there is any evidence that the committee, as a committee, did anything or allowed anything to be done in the period prior to the execution of the contract on the 15th February 2003, that was either designed to or, objectively or subjectively, would have the effect of, allowing or encouraging the claimant to believe that the two members were acting with the authority of the committee. Further, any coaching role that the claimant would have played after the execution of the contract and before April of 2004 is not necessarily consistent with the 15th February contract alone, but also consistent with the alternative one-off arrangements suggested by the defendant.³¹ Proving the enabling role of the committee in the deception as it were, in the instant case, is a necessary component in proving the ostensible authority. The mere fact that Chet Greene and Ralph Potter were members of the committee at that time, does not in my view by itself, amount to an act (or omission) on the part of the committee which led the claimant to believe that Chet Greene and Ralph Potter had the

³⁰ In cross examination he admitted he could have been present at the meeting. In any event he said he was aware of what transpired at the meeting. He did not express any doubts about what had happened at that meeting.

³¹ See para 7 of Mr. Derrick's summary at pp 21 of the Bundle. See his testimony. In any event, the evidence by the claimant of what coaching assignments he undertook (if any) prior to the new executive committee is very sketchy. I am unable to discern exactly what services he performed during that period.

requisite authority. If mere membership of the committee was sufficient, then any act by the Association's committee members will always carry with it an ostensible authority to so act. It would open the flood gates for individual committee members or any combination of them on a frolic of their own, to freely and unilaterally transact business unbeknownst to the committee body or Association membership and then hide behind their *ostensible authority* when the issue is raised by the person "misled" and aggrieved.

36. The claimant has not proved that the two members of the committee had the ostensible authority to contract on behalf of the Association and thereby bind them to the subject contract. The claimant has not proved either the real or ostensible authority of the two committee members to contract with the claimant as alleged or at all. The claimant has not discharged its burden on the required standard of proof.

WAS THE CLAIMANT DISMISSED?

37. In closing I need to comment on an observation I have made on the Claim and the evidence. In his statement of case the claimant has been unclear as to when and how he was dismissed. He could not have been dismissed by a newspaper article written by a third party. The claimant at trial testified to a later conversation between himself and the new President of the Association where he alleges he was told by the President that he was dismissed. This was the first time a specific dismissal was identified. This conversation was not even raised in his statement of claim or statement of case filed in this matter as the defendant's culpable act of dismissal. This conversation was first raised in his witness statement. As I noted earlier, although the parties have not taken the point, proof of the committee authority for this dismissal has not in any event been established, whether in relation to the female team alone or otherwise. Further, the claimant did not allege a constructive dismissal situation where he asserts that in the circumstances prevailing at the time; he could not reasonably have been expected to remain in the employ of the Defendant. Mr. Derrick for the defendant led evidence only of the termination of the claimant's services with respect to the female team.

CONCLUSION

38. In the end, the Court is satisfied; that there was a lawful committee in place at the material time; that the claimant has not proved that the committee approved the hiring of the claimant; that the claimant did not prove that the two (2) members of the committee had the real or the ostensible authority to contract with the claimant as they did. As an observation, if I were wrong on the committee being lawfully in place at the material time, the other two main issues remain unaffected and the following Judgment Order stands.

39. The claimant has not proved his case as pleaded. For the reasons provided above IT IS HEREBY ORDERED:

ORDER

- (i) That the case for the claimant is dismissed;
- (ii) That there is Prescribed Costs payable to the Defendant pursuant to the CPR 2000.

DAVID C HARRIS
HIGH COURT JUDGE
ANTIGUA AND BARBUDA