

BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 2007/0048

BETWEEN:

VERLIN CRABBE

Claimant

and

**KENSLEY WHEATLEY
INTER ISLAND TRADERS LIMITED**

Defendants

Appearances:

Mrs. Tana'ania Small-Davis of Farara Kerins for the Claimant
Mr. Malcolm Arthurs of O'Neal Webster for the Defendants

2008: March 6th and 12th
May 2nd, 6th, 30th

JUDGMENT

(Assessment of damages – Breach of contract for sale and purchase of business – misrepresentation of financial position of business - whether claimant entitled to all expenses flowing from the breach including loss of profit on the venture)

- [1] **Joseph-Olivetti, J.:** This is an application by the Claimant for the assessment of damages as against the second defendant, Inter Island Traders Limited, ("the Company") pursuant to a default judgment dated 5th September 2007. This application was filed on 19th October 2007.
- [2] The matter was scheduled for hearing on 26th February 2008. However, it was adjourned as both Counsel had failed to comply with the order dated 13th November in respect of the filing of submissions. I therefore ordered that the Claimant's submissions be filed and served by 29th February and the Company's by 7th March and that the parties rely on those. The submissions were received by me on 6th and 12th March. For completeness it is noted that an oral application by the Company to have a representative from S. S. Accounting and Consulting Services Ltd attend and be cross-examined was refused as

being unreasonable having regard to the fact that this was supposed to be the final hearing of the matter and to the inexcusable delay that had occurred to date.

- [3] When the court embarked on considering the submissions preparatory to giving its judgment the court became concerned that although the claim was for breach of contract and on the face of the contract relied on by the Claimant the Company was not a party the Claimant had nonetheless obtained a default judgment against the Company pursuant to which we were being called upon to assess damages. It is noted that both the Company and the First Defendant, Mr. Wheatley (the managing director and sole shareholder of the Company) had been represented throughout by the same firm of solicitors. The Court therefore invited both counsel on 29th April to address this issue. The Claimant was to file his further submissions on the 1st May, (this was done on 2nd May) the defendants on the 5th May (this was done on 6th May) and the Claimant's reply if any on the 8th May. There was no reply.

Facts

- [4] Mr. Verlin Crabbe and Mr. Kensley Wheatley are both businessmen. Mr. Crabbe is the owner of Bolo's Department Store ("Bolos"), a well known department store in Road Town, Tortola, BVI and Mr. Wheatley is the sole shareholder of the Company which was doing business as Santo's Wholesale an equally well known retail, wholesale and distribution grocery business in Tortola. The men entered into a written agreement on 30th October 2006 for the purchase of all the issued shares in the Company for the sum of \$895,000.00. Pursuant to the terms of the agreement Mr. Crabbe on 30th October 2006 paid the sum of \$89,500 to Mr. Wheatley which represented a deposit of 10% deposit of the purchase price. The balance was contractually due to be paid by 2 installments - \$450,000.00 two months from the date of the agreement or by 8th December 2006 whichever was the sooner and \$355,500.00 in January 2007. The Company was not a contracting party.
- [5] At the time of entering into the contract Mr. Wheatley represented to Mr. Crabbe that:-
- (a) the shares were free of all encumbrances;
 - (b) the position of the Company as reflected in the balance sheet supplied by him gives a true and fair value of all the assets and liabilities of the Company and that since the date of the balance sheet there had been no material change in the financial or trading position of the Company;

- (c) the Company is in good standing;
- (d) except as disclosed in the balance sheet or otherwise by him in writing there are no guarantees, material undertakings, commitments on capital accounts or liabilities which have been made by or on behalf of the Company, nor were there any liens, charges, pledges or other forms of security or encumbrance or equity over on or affecting the whole or any part of the share capital, undertaking or assets of the Company;
- (e) All income and other tax returns have been timely filed and are accurate and that no income or other tax or other statutory obligation is owing;
- (f) Except as may have been disclosed to Mr. Crabbe in writing, there are no claims or potential claims against the Company and that he is not aware of any incident which could likely result in any claim or potential claim against the Company;
- (g) All books, records accounts and information supplied to Mr. Crabbe in connection with the acquisition of the shares are true and correct;
- (h) He will immediately disclose in writing any event or circumstance which may arise or become known to him after the date of the Agreement and prior to completion which is inconsistent with any of the warranties and representations which would constitute a breach of the warranties and representations and which is material to be known by Mr. Crabbe as purchaser of the shares and further that he will use his best endeavours at his own expense to prevent or remedy them.

[6] On 1st November 2006 Mr. Wheatley allowed Mr. Crabbe to take over and operate the Company's business pursuant to clause 2.2 of the agreement. It was also agreed that all receivables, payables, cash in hand and cash in the bank account of the Company existing before 1st November would be the property of Mr. Wheatley and from 1st November, 2006 would become the property of Mr. Crabbe. See clause 2.3.

[7] Upon taking possession of the Company Mr. Crabbe discovered that Mr. Wheatley had seriously misrepresented the Company's financial position. Contrary to information provided by Mr. Wheatley, Mr. Crabbe discovered, inter alia, that the Company's accounts payable and the accounts receivable were misrepresented and that the Company owed statutory debts to the Government totaling \$102,568.42 with penalties of \$2,23.82 for company taxes for the years 1987-2004 and PAYE in the sum of \$3,471.37. Further, the

Company had a loan with First Bank with a balance of \$420,212.74 secured by a lien on the shares of the Company. In addition, only half of the Company's insurance premium had been paid and the business was considered to be under insured.

[8] Mr. Wheatley also represented that the stock was valued at \$632,854.00 but Mr. Crabbe took a detailed inventory which revealed that a substantial amount of the inventory had expired and had to be discarded and that the true value of the physical stock was \$175,000.00. The cash in hand was \$701.15 and cash in the Company's bank account was \$1,703.84.

[9] Prior to these discoveries and despite the fact that Mr. Wheatley did not provide him with the financial documents as he was obliged to do by Clause 6.1 of the agreement, Mr. Crabbe in the first month of operation alleged that he made several payments on behalf of the Company to meet its debts and invested substantial monies in stocking the business and in improving the facilities.

[10] In particular, Mr. Crabbe testified that he advanced a loan of \$69,000.00 from his other business; he paid \$12,623.00 to Paramount Distillers Inc using monies from Bolo's. In addition, he paid \$2,852.00 to Tico, \$42,675.00 to computerize the business, \$5,180.00 for security cameras, \$2,460 for management fees, \$3,320 on a trip to Puerto Rico to purchase supplies, \$104,282.91 for stock he purchased, \$2,608.33 for stock he transferred from Bolo's Department Store to the Company, \$11,562.00 for insurance and \$2,000 management fee to Mr. Wheatley. In December he advanced a further sum of \$8,000.00 to the Company. He paid \$7,452.00 for company taxes for 1987-1989 and \$3,433.26 payroll taxes for 2005-2006.

[11] Mr. Crabbe on 20th December 2006 exercised his right to terminate the Agreement under clause 8.2 because of the aforesaid breaches. This was communicated to the Defendants' counsel by letter of same date. This notice was accepted and Mr. Crabbe gave up possession of the Business on 28th December 2006.

[12] Mr. Crabbe filed suit on 9th March 2007 against both Defendants. He claimed against Mr. Wheatley **the sum of \$89,500 and damages for breach of contract** and against the Company the sum of \$944,651.50 and a mareva type injunction against both. It is apparent from the Statement of Claim that the claim against the Company related to the

return of monies invested into the Company's business by the Claimant pursuant to the contract between the Claimant and Mr., Wheatley and for loss of profits.

[13] The Defendants acknowledged service but failed to file and serve their defence and on 5th September, 2007 judgment in default of defence was entered against the Company for damages to be assessed plus costs. On 18th September judgment in default was entered against Mr. Wheatley in the sum of \$89,500 plus interest of \$2,157.80 and costs of \$1,950.00. This judgment has been satisfied. (See para 2 of submissions filed 29th February Mr. Crabbe).¹

[14] In her further submissions in response to the court's concerns Mrs. Small-Davis appearing on behalf of the Claimant referred to another default judgment entered against Mr. Wheatley on the 27th August 2007 for damages to be assessed and costs and submits that damages fall to be assessed against Mr. Wheatley pursuant to that judgment even though he has satisfied the other judgment against him.

Issues Arising

[15] The primary issues for determination concern the quantum of damages and are:-

(1) Whether Mr. Crabbe has established that he expended all the sums claimed pursuant to the contract.

(2) Whether Mr. Crabbe is entitled to damages for loss of business opportunity.

[16] In addition the court must determine if all the default judgments obtained herein are regular and whether the Claimant can recover judgment against the Company for in effect breach of contract and have damages assessed against the Company and/or against Mr. Wheatley.

Discussion

[17] I deem it best to consider the question of the default judgments first as this will determine how this matter is to progress. I have considered the further submissions. Having regard to the nature of the claims as pleaded, in my judgment, there is no cause of action against the Company as all the claims arise under the contract to which it is not a party and therefore on an assessment pursuant to that default judgment the Claimant will fall to recover nothing. Counsel for the Claimant seeks to rely on the concept of unjust

¹ I take it that this superseded Mr. Crabbe's evidence that none of the debt has been paid – para. 30 of 26/11/07 affidavit.

enrichment but that was not pleaded and seeks to have the court disregard the fact that the Company is a legal entity separate and distinct from Mr. Wheatley but likewise no facts were pleaded to enable the court to lift the corporate veil.

- [18] The mere fact that a person is the sole shareholder of a company does not entitle the court to disregard the separate legal status of that company. In this regard, Mr. Arthurs' submissions on the circumstances in which the court will lift the corporate veil are correct and the Claimant cannot bring himself within these principles in any event. See **Halsburys Laws of England** 4th edn. 402. – “a company is a legal entity separate and distinct from its members. That is also the position within a group of companies where the fundamental principle is that each company in a group (a relatively modern concept) is a separate legal entity possessed of separate legal rights and liabilities. There may, however, be cases where the wording of a particular statute or contract justifies the treatment of parent and subsidiary as one company at least for some purposes or where the court “will pierce the corporate veil”, not because it considers it just to do so but because special circumstances exist indicating that it is a mere façade concealing the true facts. In identifying what is a mere façade the motive of those behind the company will be relevant. The court will go behind the status of the company as a separate legal entity distinct from its shareholders and will consider who are the persons as shareholders or even as agents directing and controlling the activities of the company. The device of a corporate structure will often have been used to evade limitations imposed on conduct by law and rights of relief which third parties already possess against a defendant so justifying the court's piercing the veil.” (Emphasis added)

- [19] So, what must be done to rectify this situation? To my mind, Mr. Arthurs is correct when he submitted that in respect of the two default judgments against Mr. Wheatley one cannot have two default judgments against the same person at the same time on the same claim. This highly unusual state of affairs illustrates that the solicitors for the Claimant had some difficulty in determining what default relief the Claimant was entitled, a difficulty that eludes me as clearly the claim against Mr. Wheatley was an unliquidated one being one for damages for breach of contract and the default judgment ought to have been for damages to be assessed. However, I am not sure that we must treat the first default judgment against Mr. Wheatley as being superseded by the second of 18th September

2007 as without more both are extant. As the only default judgment against Mr. Wheatley should have been one for damages to be assessed, to my mind the second judgment must go as being irregular in light of the first, and the sums paid by Mr. Wheatley in satisfaction of that judgment must be considered as advance payment on account of damages to be assessed under the 27th August judgment. I will therefore proceed with the assessment of damages pursuant to that judgment.

[20] Now to consider the default judgment against the Company. The court has the power to vary or set aside a default judgment under CPR r. 13.3 if an application to set aside is made promptly and the applicant gives a good explanation for failure to file acknowledgement of service or defence and has a real prospect of successfully defending the claim. Therefore, strictly the court has no power to vary or set aside this judgment under CPR r. 13.3 as part from being able to satisfy the court that there is a real prospect of defending the claim the Company has not acted promptly to set aside and has given no reason for the delay. However, if the judgment stands, clearly there is no valid claim against the Company and on an assessment of damages pursuant to that judgment the Claimant cannot establish any loss for which the Company can be held liable. Accordingly, no award of damages can be made against the Company. In any event it seems to me that in these circumstances the court must have an inherent jurisdiction to set aside the order as it is in the interests of justice to do so but no authority for this course of action was referred to. The court will therefore treat this as no award on assessment. And there will be no order as to costs as the Company was represented throughout by the same lawyers as Mr. Wheatley and so incurred no additional costs.

[21] The court notes with approbation Mr. Arthurs' candour in recognizing that the Company cannot retain monies advanced to it and is willing to return all monies which can be regarded as a loan. And, I have no doubt that the Company will conduct itself accordingly. Further and more significantly, I am of the firm view that all monies found to be expended on behalf of the Company by the Claimant were expenditure that could be regarded as being made pursuant to the contract or as arising naturally thereunder, and recoverable in any event from Mr. Wheatley.

[22] Now to the question of damages. First I turn to the law governing the measure of damages for breach of contract. It is well settled. Damages are awarded not to punish the party in

breach or to confer a windfall on the innocent party but to compensate the innocent party and repair his actual loss. Compensation is normally achieved by placing the innocent party in the same position as far as money can do as if the contract had been performed. See **Halsbury's Law of England 4th Edn. Vol. 12 para. 941**. The case of **Hadley v Baxendale**² established what has come to be regarded as the classic principle which is that 'where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.'

[23] I shall now consider the various sums claimed in the light of those principles and in the light of the specific objections taken by Mr. Arthurs.

Loan given by Mr. Crabbe through Bolo's to the Company

[24] Mr. Wheatley accepts that the sum of \$69,000 was paid into the coffers of the Company and is due and owing to Mr. Crabbe. Therefore, no issue can arise about the repayment of this sum by Mr. Wheatley as I am of the view that such a payment could be said to be in the contemplation of the parties at the time of the contract. The Claimant was buying a going concern, he was allowed to go in and manage the business in the interim before completion and he had to do just that to keep the business on foot.

Sums expended on purchase of Stock - Puerto Rico

[25] Mr. Crabbe claims the sum of \$104,282.91 in this respect. This claim is substantiated by receipts exhibited to Mr. Crabbe's 3rd Affidavit.³ Mr. Wheatley however disputes this sum on the basis that Mr. Crabbe received a tax exemption on goods purchased in Puerto Rico as they were for use outside Puerto Rico and that the value of goods purchased for the Company less the exemption amounted to \$101,876.70.

[26] I accept that Mr. Crabbe received a tax exemption of \$706.50 on goods purchased at Costco Wholesale as evidenced by the receipt but I do not accept that this is the usual practice at stores in Puerto Rico as the receipt from Sam's Club of Puerto Rico shows tax

² [1843] All ER 461

³ Ex. VC 3 - pages 64-77, 83

in the amount of \$322.85. There is no notation of a tax exemption on that receipt. I accept that Mr. Crabbe paid the sum of \$104,282.91 to purchase stock for the Company and he is therefore entitled to recover that amount as this was an expenditure arising in the natural course of things having regard to the nature of contract.

Transfer of stock from Bolo's

[27] Mr. Wheatley accepts that the sum of \$2,608.33 is due and owing to Mr. Crabbe in respect of this.

Installation of security equipment and electronic cash registers

[28] Mr. Crabbe paid the sum of \$47,855 to computerize the business and to install security cameras. That such sums were expended is not challenged. However, Mr. Arthurs submits that the expenditure on the security cameras in the sum of \$5180.00 was unreasonable as Mr. Crabbe was not authorized to install security cameras and they were not required in the ordinary course of business. Further, that Mr. Crabbe should not be reimbursed as he had an opportunity to mitigate his loss as he was told to remove the equipment from his premises and failed to do so.

[29] Mr. Crabbe incurred this expense in the course of managing the business and with the expectation that the contract would be completed. The contract provided for Mr. Crabbe to be given the management of the business and it must have been in the contemplation of the parties that Mr. Crabbe would take steps to improve the business during that period and that if such steps were taken and the contract breached that Mr. Crabbe would be entitled to recover monies spent on improvement. To my mind this was a reasonable expense in this modern day as it was meant to enhance the business and was not an unusual or unreasonable expense. Mr. Crabbe entered into an agreement to purchase a retail and wholesale distribution business and not a corner store (with all due respect to corner stores which serve a useful purpose). In the ordinary course of business a simple cash register would be adequate for a corner store but having regard to the size of the business it would be reasonable for Mr. Crabbe to both computerize the business and install security cameras.

[30] In addition, says Mr. Arthurs, Mr. Crabbe has failed to mitigate his loss under this head. I accept that the law imposes on Mr. Crabbe a duty to take reasonable steps to mitigate his losses but the onus is on Mr. Wheatley to show that what the Claimant did was

unreasonable and he has failed to discharge that onus. Mr. Crabbe without more did not act unreasonably in failing to remove the equipment and to sell it as Mr. Wheatley has not shown that there is a ready market for such second hand equipment and that it would be unreasonable for Mr. Crabbe not to have availed himself of it. Furthermore, Mr. Wheatley and the Company have been using the equipment since the termination of the contract and has benefited from their use. I find that Mr. Crabbe is entitled to be reimbursed for the equipment in the amount of \$47,855.00.

Repayment of insurance premium

[31] I accept that Mr. Crabbe expended the sum of \$ 11,562.00 on insurance premiums and his reason for increasing the premium and that that expenditure was not unreasonable. It could be said to be contemplated by the parties when they made the contract that Mr. Crabbe in managing the business would meet all normal expenses and if the contract was breached he would be compensated for those expenses. Therefore, Mr. Crabbe is entitled to the return of that sum.

Loan to Company - \$8,000

[32] Mr. Wheatley disputes liability for this sum on the basis that it was used to pay the increased insurance premium. As already stated, I accept Mr. Crabbe's explanation for the need for an increased premium and find that this was not an unreasonable expenditure. However, Mr. Crabbe is not entitled to the return of that sum plus the monies expended on insurance as this will be double accounting and I have already ordered the return of monies expended on insurance.

Payment of debt due to Tico

[33] Mr. Wheatley concedes that the sum of \$2,852.00 is due and owing to Mr. Crabbe for the payment of this debt on behalf of the Company.

Payment of debt due to Paramount Distillers Inc

[34] Mr. Crabbe deposes that he made a wire transfer payment in the amount of \$12,623.00 from Bolo's account to Paramount Distillers to pay off an outstanding debt for the Company. He claims that evidence of this is at page 63 of exhibit "VC 3". Mr. Crabbe has exhibited a transaction from Banco Popular in the amount of \$22,339.66 drawn on Bolo and Brothers Ltd account. However, there is no reference in that to a payment to Paramount Distillers. Without proper evidence of this payment I cannot allow this claim.

Consultation fee paid to Mr. Wheatley

[35] There is no dispute that \$2,000.00 was paid but I find that Mr. Wheatley carried out some consultation and will make no award under that head.

Management fees owed to Mr. Crabbe

[36] Mr. Crabbe has not satisfied me that this fee of \$1,200.00 for November 2007 and \$1,140.00 for December was monies owed to him under the contract and I cannot allow it.

Travel expenses to Puerto Rico- buying trip

[37] I accept Mr. Crabbe's evidence that traveling expenses for this trip was \$3,320.00 and that it was to purchase stock for the Company. He is entitled to recover same.

Damages for Profit on stock purchased and/or transferred

[38] Mr. Crabbe claims profit on the stock he purchased in the amount of \$106,891.24 at the rate of 35% being the rate Mr. Wheatley represented to him in the balance sheet. See para. 15 of his affidavit of 26th November. This he calculated at \$37,411.93. Having regard to the principles adverted to in **Hadley v. Baxendale** and to the cases referred to under the paragraph hereof dealing with loss of business opportunity I accept that this is a recoverable loss as it is a natural and foreseeable consequence of breach of a commercial contract like the present.

Damages for Loss of business opportunity

[39] Mr. Crabbe claims damages for loss of business opportunity. According to an assessment done by S.S. Accounting and Consulting Services Ltd. on which he relied and which was not challenged Mr. Crabbe's lost opportunity was assessed between \$276,577.78 and \$466,666.67.

[40] Mrs. Small-Davis has pointed out that an assessment of this nature is not an easy task and cannot be achieved with mathematical precision or certainty but that in doing this assessment the court must pay regard to the fact that Mr. Crabbe is an experienced and successful businessman and award him a reasonable return on his money had the sale been concluded. Counsel relied on dicta in **Chaplin v. Hicks [1911] 2 K.B. 786**, and **Syed Hussain v. Bank of Credit and Commerce International SA [2002] 3 All ER 750** at paras. 58-68 **Chirnside v. Fay [2007] PNL R 6** and **Finnis v. James Caulfield [[2002] EWHC 3223**. **Finnis** is a personal injuries case which concerned the injured claimant's

- loss of future earning capacity as a result of him being unable to expand his business. I therefore do not find **Finnis** of any real assistance.
- [41] Mr. Arthurs on the other hand is of the view that this is not a viable claim as it was not contemplated by the parties as a consequence arising on breach. Mr. Arthurs says further that the report by S.S. Accounting and Consulting Services Ltd is flawed in that it includes claims for unaccounted sums and the maker of the report was not cross-examined to give assistance with any changes in the formula for calculating this loss. This last is due entirely to Counsel's failure to make a timely request for the maker of the report to attend to be cross-examination and he must do the best he can with what is before the court.
- [42] Loss of business opportunity is an accepted head of loss. As Fletcher Moulton J. said in **Syed** p. 6 - "...I think that where it is clear that there has been actual loss resulting from the breach of contract, which it is difficult to estimate in money, it is for the jury to do their best to estimate, it is not necessary that there should be an absolute measure of damage in each case".
- [43] The evidence is that this was a commercial contract and it cannot be doubted that such contracts are entered into for economic benefit and not out of charity. It was a natural and foreseeable consequence of the breach of this contract and one that would have been present to the minds of the parties when they entered into it that a breach would result in Mr. Crabbe losing this opportunity and so suffering loss. I am satisfied from Mr. Crabbe's evidence that he has actually lost an opportunity to make a profit as a result of the breach and is entitled to compensation for that loss.
- [44] I accept Mr. Crabbe's evidence that the company made a profit of 35% and I have already awarded 35% of the amount expended on stock for loss of profits on the stock he put into the Company. This to my mind is reasonable compensation and he cannot recover this loss as well as damages for loss of business opportunity. Accordingly, I will make no award under this head.

The Return of the deposit

- [45] In addition, as the default judgment of the 18th September was set aside and there is no doubt that the deposit was paid and that the Claimant is entitled to the return of his deposit by way of damages, Mr. Wheatley is to pay Mr. Crabbe the sum of \$ 89,500.00

being the deposit. For the avoidance of any doubt all sums paid by Mr. Wheatley in satisfaction of that judgment is to be set off against the damages ordered herein.

Interest

- [46] Mr. Crabbe is to have interest on all sums awarded at the rate of 12% per annum from the filing of the claim until judgment as I accept his evidence that this was the prevailing commercial rate.

Costs

- [47] The court has a discretion on costs both as to the incidence and as to the amount. See CPR 64.6 (1). Normally, costs follow the event. Here, the court takes into consideration that this matter was dealt with wholly on paper and there were no complex issues of law or facts. See CPR 65.5 (2) which stipulates all the factors to be considered on the exercise of the discretion. In all the circumstances the court is of the view that Mr. Crabbe should not recover the maximum amount of costs that he could be awarded. Accordingly, I award him 50% of his costs calculated in accordance with CPR 65.5 Appendix C (6). This strikes the court as fair and reasonable in all the circumstances as costs is never to be regarded as a windfall for the successful Claimant. **Summary**

- [48] In summary for the foregoing reasons the court orders as follows:-

- (1) The default judgment against Mr. Wheatley of 18th September 2007 is set aside and all sums paid by Mr. Wheatley in satisfaction of that judgment is to be set off against the damages awarded herein.
- (2) No award is made against the Company on the assessment of damages pursuant to the default judgment of 5th September 2007.
- (3) Mr. Wheatley is to pay Mr. Crabbe the sum of \$368,392.17 being damages assessed pursuant to the default judgment of 27th August 2007 made up as follows:-
 - (i) \$69,000.00 representing the loan paid to the Company from Bolo's;
 - (ii) \$104,282.91 for stock purchased for the company;
 - (iii) \$2,608.33 representing stock transferred from Bolo's to the Company;
 - (iv) \$37,411.93 for loss of profits on stock purchased and transferred;

- (v) \$47,855.00 being monies he expended to install computerized cash registers and security cameras;
 - (vi) \$2,852.00, being the debt owed to Tico;
 - (vii) \$11,562.00 on insurance premiums;
 - (viii) \$3,320.00 being expenses incurred on buying trip to Puerto Rico; and
 - (ix) \$89,500.00 being the refund on the deposit.
- (4) Mr. Wheatley is to pay interest on all sums awarded at the rate of 12% per annum from March 9th 2007 until judgment.
- (5) Mr. Wheatley is to pay Mr. Crabbe 50% of his costs calculated in accordance with CPR 65.5 Appendix C (6).

Rita Joseph-Olivetti
High Court Judge
British Virgin Islands