

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM SUIT NO. 554A OF 2002

BETWEEN:

HANSRAJ MATADIAL

Claimant

And

CECELIA JOHN

Defendant

And

CLAIM SUIT NO. 555 of 2001

BETWEEN:

GRACE MATADIAL

Claimant

And

CECELIA JOHN

Defendant

Appearances:

Mr. Samuel Commissiong for Claimants

Mrs. Kay Bacchus-Browne for the Defendant

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2007: March 26th
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JUDGMENT

- [1] **Blenman J**, These are two claims for malicious prosecution and counterclaims for damages for money spent on water charges, allegedly incurred due to the unlawful use of water by adjoining neighbours.
- [2] The two claims were consolidated and heard together; they indicate the sort of unhappy differences that can arise between neighbours, and which can, and often do result in protracted litigation.

Background

- [3] Mr. Hansraj Matadial (Mr. Matadial) is a Barrister and a Solicitor practising in Saint Vincent and the Grenadines. He resides at Stoney Ground Cane Garden Saint Vincent and the Grenadines with his wife Mrs. Grace Matadial (Mrs. Matadial) (The Matadials).

- [4] The Cane Garden Apartments Ltd is a company that owns apartments that are also situate in Stoney Ground Cane Garden, Saint Vincent and the Grenadines.

- [5] Mrs. Cecilia John (Mrs. John), who ordinarily resides in the United Kingdom owns a property situate also in Cane Garden, Saint Vincent and the Grenadines.

- [6] The Matadials have sued Mrs. John for malicious prosecution; they allege that as a result of Mrs. John's false allegation against them, that they had stolen her water, they were wrongfully charged and maliciously prosecuted in the Magistrate Court. The charges were prosecuted by Mrs. John who utilized the services of Mr. Bayliss Frederick (Mr. Frederick) Attorney at law. The Matadials contend that at the close of the prosecution's case Mr. Frederick conceded that the ingredients of the charges were not established and they were acquitted. As a result, the Matadials have filed these proceedings and seek both special and general damages against Mrs. John.

- [7] The Matadials further contend that Mrs. John through her servant or agent caused the charges of larceny to be published in the newspapers. They say that the charges against them were the subject of several discussions on radio talk shows and they have suffered loss as a consequence.

- [8] Mrs. John denies that she maliciously or falsely caused the Matadials to be prosecuted. She contends that her decision to prosecute was based on professional advice that she received from the personnel of the Central Water And Sewerage Authority (CWSA) and her Attorney at Law Mr. Frederick. Mrs. John disputes that she was actuated by malice in prosecuting the Matadials. She also denies that she was in any way whatsoever involved in the publication of the charges.

- [9] Mrs. John counterclaims against the Matadials and seeks to recover from the Matadials the sum of money she says that she expended in liquidating the water charges, which she alleges were incurred due to the unlawful diversion of the water away from her property to the Matadial's property. The Matadials deny that Mrs. John is entitled to any compensation from them.

Issues

- [10] The issues that arise for the Court determination are as follows:-
- (a) Whether Mrs. John has maliciously prosecuted the Matadials;
 - (b) If so, what is the amount of damages to which the Matadials are entitled?
 - (c) Whether Mrs. John is entitled to be compensated for the loss she alleges to have suffered.
- [11] The Matadials testified on their own behalf and called Mr. Daniel Cummings (Mr. Cummings), Mr. Randolph Toussaint (Mr. Toussaint), and Mr. Keith Constance (Mr. Constance) in support of their claim. The Matadials also tendered several documents in evidence including the transcript of the proceedings in the lower court. Mrs. John testified on her own behalf and called Mr. Ardon Lee (Mr. Lee) Mr. Bayliss Frederick (Mr. Frederick) and Mr. Tyrone Olliver (Mr. Olliver) in support of her case. Mrs. John also tendered several documents into evidence. In addition the Court visited the locus in quo.

Claimant's Evidence Mr. Constance

- [12] The first witness to testify was Mr. Constance. In his witness statement he stated as follows:

I live at Belair in the State of Saint Vincent and the Grenadines. I am a plumber by profession. I do not know Mrs. Cecelia John, but I know that she is the owner of a house near to Cane Garden Apartments. I started to do plumbing work for Cane Garden Apartments and for Mr. and Mrs. Matadial's private residence from about the year 1998. I had to visit the premises of Cane Garden Apartments on a regular basis, sometimes daily. The reason for this was that the elbow joints in the four apartments

at Cane Garden were defective in that all of them developed hairline cracks and were leaking. I had by then changed about all of them. On the premises of Cane Garden Apartments is a black water tank which has a toilet float, this float sticks at times and I normally adjust it so as to stop the tank overflowing when the tank is filled. That float was installed by Winston Webb another plumber. Whenever I adjust the float the tank would stop overflowing. To assist further with the overflowing I put in two stop corks which can be turned off when the tank is filled. Water from the tank can only feed the apartments when the street water is off. Each of the four apartments has four separate water metres which are numbered 1A and 1B, 2A and 2B. I could swear positively and say that if there was any water connection from Cecelia John's property to Cane Garden Apartments he would have seen it. However, he never saw any connection between the Cane Garden Apartments and Mrs. John's property."

- [13] During cross examination by learned counsel Mrs. Kay Bacchus-Browne, Mr. Constance said he started to work for the Matadials about three years ago. He also worked on the apartments; if the elbows on the PVC pipes got hairline cracks he would repair them and this he did probably twice a month. Later, he said that he worked daily on the elbow and T Joints. There are four apartments and he worked on them regularly and in his view he must have changed about 80% of the fitting on the apartments. At one time, he observed that the pipes were leaking and he fixed them. In his view, a couple hundred gallons of water were lost (on that occasion). He denied ever seeing any PVC pipe going from the tank on the Cane Garden Apartment to the ground. While he did not fix any of the Matadials pipes for the month preceding his giving evidence, he was sure that he had worked on the Cane Garden Apartments for the last 3 – 4 years. The problems still persist at the Cane Garden Apartments. One occasion, he saw water overflowing from the tank in the Matadial's yard and he tried to fix the problem. He adjusted the valve to the large black tank. He had cause to fix the tank about 3 – 5 times and this was between 2000 – 2002. He was sure that on one occasion he had to empty the entire tank in order to repair it. He was clear that he did not see any PVC pipe leading from the tank on Matadial's property. He had to work on the valves and checked them early last year. There are two stop corks on Mr. Matadial's property and he is unaware of the stop cork on Mrs. John's property. He said that when he turned off the stop cork on the Matadial's property the water stopped running.

- [14] During re examination by Learned Counsel Mr. Commissiong, Mr. Constance said that there are over 200 elbows, in the apartments, made of PVC. He often changed them when the need arose since from time to time the water pressure caused the elbows to crack.

Mr. Matadial

- [15] In his witness statement Mr. Matadials stated that:

“About 100ft from where I live are two houses constructed on a portion of land owned by a company called Cane Garden Apartments Limited, of which my wife Grace Matadial is the sole director. Each of the two houses consists of two floors, an upper floor and a lower floor. The upper floor has a three bedroom apartment and the lower floor consists of a one bedroom apartment. Each of the four apartments has its own separate water meter and electric meter. The house nearest to the road, the water meter for the upper apartment is numbered 1A and the water meter for the lower apartment is numbered 1B. The house at the back, the water meter for the upper apartment is numbered 2A and the water meter for the lower apartment is numbered 2B. The idea behind installing four water meters and four electric meters is that whenever the properties are rented, the tenant pays his own water and electric bills. On the left hand side of the house at the back, is a black water tank. The idea behind the installation of this water tank is that whenever the street water is turned off, the water tank then supplies the four apartments. The supply of water for that tank passes through the meter for apartment 2A. Once the street water is not turned off, the tank cannot supply the apartments because of the installation of a gate valve. There is a toilet-like float installed inside the tank which is supposed to stop the flow of water into the tank when it is full. At times this float does not work properly and water still continues to go into the tank and drip over the side. My wife normally calls a plumber, Mr. Keith Constance, to adjust it. Because all the elbow joints in both houses were defective, the plumber visited the premises nearly on a daily basis over a period of time. Obliquely opposite the tank Mrs. John has a house. Mrs. John gets her water supply from a street facing her house and Cane Garden Apartments Limited gets its water supply from a different street facing its two houses. Mrs. John had persons occupying her house prior to March 1999 and for the months of April, May and September 1999 and for the months of February to May 2000.

On the 17th day of October 2001, Mrs. John instituted a charge of larceny of water against me and my wife. On the 16th day of November 2001, that charge was published in the News newspaper. On the day prior to the publication of the charge, I met Mr. Frederick coming into the Supreme Court yard as I was going out. The said Mr. Frederick as he was about to

pass me, said to me "make sure you buy a copy of the News newspaper tomorrow and listen to Lynch Radio Program." Lynch's Radio Program is widely listened to in St Vincent and the Grenadines. Sometime after the complaint was served on me, but prior to the hearing of the matter on 12th December 2001, I spoke to Mr. Hypolite, Mrs. John's agent and invited him to come around and visit the premises of Cane Garden Apartment Limited. Mr. Hypolite did go. He looked at the connection to the black water tank. I also showed him the water bills for Cane Garden Apartments Limited for the period March 1999 to June 2000, as well as a copy of Mrs. John's water bill for the same period. After Mr. Hypolite looked at the water bills and the connection to the water tank, I told Mr. Hypolite that I would stand the costs to dig up the ground from Mrs. John's water meter to see if there was any water connection leading from Mrs. John's property to Cane Garden Apartments' property. After the criminal complaint was served on my wife and me, I got Mr. Carlyle Dougan to write to the Central Water and Sewerage Authority (CWSA). The CWSA never replied to the letter which Mr. Dougan wrote to them.

The criminal charge was tried on the 12th day of December 2001 and was dismissed. After Mrs. John's case was closed before the Magistrate, Mr. Parnel Campbell submitted to the Court that there was no case for me to answer. The Magistrate then interjected and said he's going to listen to the submissions after lunch. Mrs. John's solicitor Mr. Frederick immediately rose to his feet and told the Magistrate that there will be no need to return after lunch, that he's conceding that there was no case for me to answer. At that stage, the Magistrate was visible angry and stated that there isn't an iota of evidence against the two Defendants and dismissed the charge.

After the charge was dismissed as I was leaving the Court, Mrs. John was standing near to the door of the Court, as I was about to pass Mrs. John, I had the water bills for Cane Garden Apartments in my hand, I attempted to show Mrs. John the water bills to prove to her that in no way her water could have been diverted to the premises of Cane Garden Apartment. Mrs. John stated to me that she was not interested in any bills and that she was going to continue to fight my wife and I until she recovered her \$3,000.00 and that she would make sure that the case be given maximum publicity. Mrs. John in prosecuting my wife and I had absolutely no grounds for doing so as can be seen from the transcript of the proceedings in the Magistrate's Court. Her motive for doing so was to recover from me the sum of \$3,000.00 as is now again claimed from me by her counterclaim. If my wife and I had stolen any water from Mrs. John, CWSA had ample powers to deal with us. At the trial at the Magistrate's Court Mrs. John led absolutely no evidence as to any wrong doing by me and my wife. Although we live about 100 feet from Mrs. John's house, Mrs. John before instituting the criminal proceedings never attempted to

speaking to us. I was represented by Mr. Parnell Campbell at the Magistrate's Court. I paid to Mr. Campbell the sum of \$8,500 to represent me.

I deny that I am liable to pay Mrs. John the sum of \$3,000 which she owed to CWSA. I deny that my wife and I ever diverted any water from Mrs. John's premises to Cane Garden Apartments' premises."

- [16] In his viva voce evidence, Mr. Matadial said that he is aware that Mr. James Phillip is the CWSA's customer and not Mrs. John. He stated that he paid various sums of money to Mr. Parnell Campbell to represent him in the Magistrate's Court. The house in which he lives is also not far from Mrs. John's house. There is a concrete drain that separates Mrs. John's property and the Cane Garden Apartments.
- [17] Mr. Matadial said that there was no pipe sleeve near to the tank on the land where the Cane Garden Apartments are situated, before the Magistrate's Court case but that "he had seen a pipe sleeve recently that is after he had filed the witness statement." The pipe sleeve is at the side of the drain and it is at the back of the black tank – outside of my tank bending towards the Defendant's place." He further said "I would not know where it went but if it was there I will pay for whatever." At this point of his evidence Mr. Matadial became very emotional. Mr. Matadial maintained that it was after the filing of the witness statement that he saw a sleeve on the tank and "he is prepared to pay to root up the pipe to see where it goes." In fact, it is not the first time that he is making the offer to dig up the pipe to see where it goes." Mr. Matadial said that no one ever told him that water was coming from Mrs. John's property to his land before the criminal prosecution. He never received any correspondence which indicated to him that water was coming from Mrs. John's cistern to his land. It was not until he had seen the defence in the matter that he became aware that CWSA had visited the premises.
- [18] Mr. Matadial complains that after the conclusion of the case in the Magistrate Court, he went to Mrs. John and showed her the bill for the Cane Garden Apartments but that "she intends to fight them until she gets her \$3,000."

- [19] During cross examination by Learned Counsel Mrs. Bacchus-Browne, Mr. Matadial said that it was only recently that he saw Mrs. John in her property but prior to this one Roslyn Daniel lived there. He was sure that in September 1999, Mrs. John's house was occupied and recalled seeing some big juke boxes there and electric light was on in Mrs. John's house. Having looked at the photographs exhibited Mr. Matadial said that he was sure that the pipe sleeve that he saw in the photograph was not there up to December 2001. However, he said that the white PVC was there when the property was constructed and he supervised it and the PVC pipe is on the Cane Gardens Apartment property. He, like Mrs. Matadial, said that the construction of the house was completed in 1997 and as soon as the construction was completed the pipes had about 9 – 10 visible leaks.
- [20] In re examination by learned counsel Mr. Commissiong, Mr. Matadial said that the standing pipe is the sleeve that he was speaking about. However, The PVC (white pipe coming out of the hole) is a drainage pipe and the latter was erected by his workmen in 1997.

Mr. Toussaint

- [21] Mr. Randolph Toussaint in his witness statement said:

"I live at Ratho Mill in the State of Saint Vincent and the Grenadines. I am a Retired Commissioner of Police. I know the Matadials very much and am very good friends with them. I know that the Matadials were prosecuted in Court by Cecelia John for larceny of water. Sometime in the month of November 2001, I accompanied them to the Kingston Magistrate Court. The case was postponed for hearing at a later date. Outside of the Court I was speaking to Mr. Bertram Commissiong, Mr. Parnel Campbell and Mr. Matadial, I then left the three of them to go home. As I left them and walked for about twenty yards, a lady shouted out to me. I stopped and went to the lady and told her that I did not know her, she told me that her name was Cecelia John and that she had come to my house. She told me that she was the sister of Cyril Roberts. I told her that I know Cyril Roberts very well and we started chatting. As we were chatting I realized that she was the person who was prosecuting Mr. and Mrs. Matadial. In the course of the conversation I asked her why she had to let the matter get so far and why she did not speak to Mr. and Mrs. Matadial. She said to me that she did not know Mr. and Mrs. Matadial but that she is prepared to drop the case and finish with it if Mr. and Mrs. Matadial pay her the sum of \$3,000.00 which she had to pay to the Water Authority for

water which Mr. and Mrs. Matadial used. She then narrated to me certain comments, which Bayliss Frederick made to her about Mr. Matadial.

- [22] Mr. Toussaint admitted during cross examination by learned counsel Mrs. Bacchus Browne that he is very close friends with the Matadials and that he had accompanied Mr. Matadial to the Magistrate Court hearing. He maintained that he spoke to Mrs. John and he told her why they did not settle the matter and Mrs. John told him that he did not know Mr. Matadial and was not averse to settling the matter if Mr. Matadial would pay her the \$3,000 she paid to the Water Authority. Mr. Toussaint admitted that when he spoke to Mrs. John she was not viciously attacking the Matadials. In fact she had stated that she did not want to go to Court.

Mrs. Matadial

- [23] In her witness statement, Mrs. Matadial said as follows:

“I got to know the defendant for the first time when I saw her at the Kingston Magistrate’s Court sometime in November 2001. About 100 feet from where I live with my husband, there are 2 houses owned by a company called Cane Garden Apartments Limited. I am the sole director of that company. Each of the two houses has an upper and lower apartment. The upper apartment consists of 3 bedrooms and the lower apartment consists of 1 bedroom. Each apartment has its own water meter and its own electric meter. The house nearest to the road, the water meter for the upper apartment is numbered 1A and the water meter for the lower apartment is numbered 1B. The house at the back, the water meter for the upper apartment is numbered 2A and the water meter for the lower apartment is numbered 2B.

There is a black water tank on the left hand side of the house at the back. The idea behind the installation of that tank was that if the main water supply for any reason was turned off, water could be supplied from the tank. Once the main water supply is on, water from that tank receives its supply from 2A water meter. There is a toilet like water float in the water tank that is supposed to stop the flow of water into the tank when the tank is filled. Sometimes this float sticks and the water overflows in a dripping motion. Whenever this happens, I normally get a plumber, Mr. Keith Constance to fix it. There were times when Mr. Keith Constance visited the two houses nearly on a daily basis. The reason for this was that all the elbow joints in the 4 apartments were defective with hairline cracks. The plumber had to remove all the elbow joints and replace them with new elbow joints. Obliquely opposite the water tank, the defendant has a house facing another street from which the defendant gets her water

supply. Separating the 2 houses and the defendant's house is a concrete drain approximately 2ft deep. Whenever the apartments are rented, it is always a term of the lease that the tenants pay for consumption of all utilities including water to the Central Water and Sewerage Authority (CWSA). Cane Garden Apartments Limited is stated as the consumer. CWSA will send the bills to me, I then give them to the tenants and the tenants pay the bills directly to CWSA. If an apartment is not occupied, I will pay the basic rental charge on behalf of Cane Garden Apartment Limited. The normal annual water consumption costs for my home where I live with my husband at Cane Garden for 1999 and 2000 are \$916.56 and \$770.88 respectively.

On the 17th day of October 2001, the defendant filed a criminal charge in the Kingstown Magistrate's Court against my husband, Hansraj Matadial and myself accusing us of stealing \$3,000 worth of water during the months of March 1999 and continuing until the 9th day of June 2000. On the 16th day of November 2001, the said complaint was published in the front page of the News newspaper with a photograph of my husband. The said charge was also widely publicized on 2 of the radio talk shows in St. Vincent. On the 12th day of December 2001, my husband and I stood trial at the Kingstown Magistrate's Court and the charge against us was dismissed.

I should mention that after the defendant's case was closed before the Magistrate, Mr. Parnel Campbell who represented my husband submitted to the Court that there was no case for my husband to answer. The Magistrate then interjected and said he's going to listen to the submission after lunch. The defendant's solicitor Mr. Bayliss Frederick in the presence of the defendant in this suit immediately rose to his feet and told the Magistrate that there will be no need to return after lunch, that he is conceding that there was no case for the defendants to answer. At that stage, the Magistrate was visibly angry and stated that there isn't an iota of evidence against the 2 defendants and dismissed the charge. The defendant had persons occupying their house prior to March 1999 and for the months of April, May and September 1999 and for the months of February to May 2000.

The defendant in prosecuting my husband and I had absolutely no grounds for doing so as can be seen from the transcript of the proceedings in the Magistrate's Court. Her motive for doing so was to recover from us the sum of \$3,000 as is now again claimed from us by her counterclaim. If my husband and I had stolen any water from the defendant CWSA had ample powers to deal with us. At the trial at the Magistrate's Court the defendant led absolutely no evidence as to any wrong doing by my husband and me. Although we live about 100 feet from the defendant's house, the defendant before instituting the criminal proceedings never attempted to speak to my husband or myself.

The prosecution of me by the defendant has caused me financial loss, pain and embarrassment especially due to the wide publicity which was given to the criminal case. I deny that I am liable to pay to the defendant the sum of \$3,000 owing by her to the CWSA.

I deny that my husband and I ever diverted any water from the defendant's premises to Cane Garden Apartment's premises. I was represented at the Magistrate's Court by Mr. Bertram Commissiong, QC and Ms. Mira Commissiong. I paid to them the sum of \$5,000 as legal fees to represent me."

[24] In cross examination by Mrs. Bacchus Browne, Mrs. Matadial said that she did not know Mrs. John before seeing her in the Magistrate Court so it would have been impossible for there to be any bad blood between them. She was aware that the water tank situate at the Cane Garden Apartments was overflowing. There was no PVC pipe leading from Mrs. John's pipe to the water tank situate at Cane Garden Apartments. She is unaware of the stop cork on Mrs. John's property. The Cane Garden Apartments were built in 1996 and the water tank was installed in 1977, in the said latter year she rented the apartment. She was aware that the water tank overflowed on and off for a period of about 2 – 3 years and she called Mr. Constance about 4 – 5 times to repair the tank. She also said that there was seepage of water in the premises of the apartments.

[25] Mrs. Matadial said, further in answer to Mrs. Bacchus Browne, that CWSA bills the Apartments, then these bills are then (divided) listed separately in each tenant's name since each apartment has separate meter. Mrs. Matadial said that from 1997 to the date of her giving evidence she employed Mr. Constance to repair the hair line cracks on several occasions. Mrs. Matadial maintained that she has never seen a PVC pipe on the boundary between the Cane Garden Apartments and Mrs. John's property. She further said that she believes that Mrs. John knows that they (the Matadials) did not steal her water. Mrs. Matadial stated that during June 1999 – 2000 Mrs. John's property was occupied. In fact, she recalled in September 1999 hearing loud music coming from Mrs. John's property and that the music was so loud that it disturbed her (Mrs. Matadial). She was sure that a family resided in Mrs. John's house. She was unaware that Mrs. John had to pay \$3,000 for water rates and did not know whether or not Mrs. John bears her any malice.

Mr. Cummings

[26] Mr. Daniel Cummings stated in his witness statement as follows:

"I am the former manager of the ("CWSA") Saint Vincent and the Grenadines. I have held the position of Manager of the CWSA for the past 16 years. The CWSA is a statutory body with responsibility for, among other things, constructing, operating and maintaining works in connection with the supply of water and the disposal of sewerage. Consequently, the CWSA also offers technical assistance to any consumer who may need help in locating a suspected leak. On or about the 7th day of June, 2000, the CWSA received a report by telephone of a leak at the property of Cecelia John, the Defendant. Mrs. John's property is located at Cane Garden, adjacent to the property of Hansraj Matadial and Grace Matadial.

As a result of that report, sometime later that day personnel from the CWSA visited Mrs. John's property to investigate the source of the suspected leak. The personnel observed a correlation between the closing of the stop cork on Mrs. John's property and Mrs. Matadial's overflowing tank but saw no evidence of a leak. The CWSA's personnel verbally informed Mrs. John of this on the site.

About one week later, on or about the 15th day of June 2000, I, along with a technical team of employees from the CWSA, visited the Cane Garden area where Mrs. Matadial and Mrs. John reside. At the site, the team advised Mr. Hansraj Matadial, Mrs. Matadial's husband, that it was visiting for the purpose of conducting checks on the plumbing systems of the properties and sought his permission to enter and his assistance in checking the system on his property. During that visit, the team examined the systems on both Mrs. Matadial and Mrs. John's premises in detail. On this occasion, neither Mrs. Matadial nor Mrs. John was present. The technical team found no evidence of a cross connection and there was never established any physical link in the water systems on both properties.

Sometime after that visit CWSA disconnected the water service from Mrs. John's property owing to Mrs. John's non payment of arrears.

Sometime in or about June or July 2000 it became necessary for CWSA personnel to again visit Mrs. John's property as it was subsequently discovered that despite the water service having been disconnected before, water was still being used on the said property. The CWSA therefore completely disconnected the water service on Mrs. John's property from the main on the road. I do not know, and have no way of

knowing who continued to use water on Mrs. John's property after the water service was first disconnected.

As far as I was aware none of the staff or personnel of the CWSA ever observed a two-inch plastic piping, or any other physical connection, between the two premises and I never advised anyone that there existed any physical connection. I do not believe that any other member of the CWSA staff so advised anyone either.

Mr. Cummings further said that although the correlation between the closing of the stop cork on Mrs. John's property and the overflowing tank on Mrs. Matadial property appeared odd, nothing that was observed by me or the members of the technical team could lead to the conclusion that there was cheating. If there had been evidence of cheating, the CWSA would have taken immediate action, by disconnecting Mrs. Matadial's water supply, imposing a fine or instituting legal proceedings against Mrs. Matadial."

[27] During further examination by learned counsel Mr. Commissiong, Mr. Cummings, said that the CWSA received a report in relation to Mrs. John's property. He was aware that her property was vacant and that she was not on the island at the time. As a consequence of the report he visited the house and it appeared as though it was vacant and uninhabited on the times he visited there. The property belonging to the Matadial was inhabited. He took a keen interest in the matter because of the waste and water was germane to him.

[28] During cross examination by learned counsel Mrs. Bacchus Browne, Mr. Cummings said that he was a part of the team of employees from CWSA, which included Mr. Lee and Mr. Olliver that visited Mrs. John's property. He said that he was unsure that he was present when the correlation was observed but had visited Mrs. John's property on another occasion. Mr. Cummings said he was aware that the water to Mrs. John's property was disconnected on the 7th June and therefore he would not have expected water to be leaking from Mrs. John's property.

[29] Mr. Cummings also said that while Mr. Lee's evidence suggest that there was an inter connection between the stop cork on Mrs. John's property and the line on the tank; he saw no evidence of it. Mr. Cummings said that it was within the realm of possibility that there was a connection between the stop cork and the water flowing from Matadial's tank but it is

not conclusive. He said that a remote possibility would be that someone was opening and closing a pipe on the Matadial's property at the same time the stop cork on Mrs. John's property was turned on, for this to happen if the person would have had to do the same thing and at the same time when one is opening the stop cork on Mrs. John's property. He said he saw no evidence of a leaking pipe on Mrs. John's property.

[30] Mr. Cummings maintained that he did not observe the oddity of the stop cork and the overflowing water but he was sure that Mrs. John was not present but Mr. Matadial was present when he visited their premises and Mrs. John's representative, at that time, was present. Mr. Cummings was adamant that he found no evidence of inter connection between the two properties and he definitely did not see a bit of pipe exposed as shown in the (photograph) exhibit. However, he said that the inference could not have been drawn that there never or could not have been any connection between the two properties. Mr. Cummings admitted that on the first occasion when the meter and valve was removed there should not have been water flowing to Mrs. John's house. He recalled CWSA having to make a second disconnection to Mrs. John's house but he did not check to see if any water was still coming to Mrs. John's house. He said that it was discovered that where the meter was removed someone had replaced the meter with a piece of pipe so that the property was in fact connected. He is aware that when the stop cork on Mrs. John property was turned on water flowed in Mr. Matadial's tank.

[31] During re examination by Mr. Commissiong, Mr. Cummings said that if there was a cross connection it could have occurred (a) under groundlines running from one property to the other or (b) above the ground connection, the latter which could have been removed at times and reinstalled. Mr. Cummings was adamant that he saw no evidence of any cross connection, to the best of his knowledge. He said that there was a drain between the Cane Garden Property and Mrs. John's property one would have had to go under the drain as well. Mr. Cummings admitted that from his investigation there was excessive consumption on the part of Mrs. John's property for a brief period of time.

Defendant's Evidence

[32] Mrs. John stated as follows in her witness statement:

"I have been living abroad for over 33 years. Since the purchase of our property in 1987, we never lived there in Cane Garden. I was never aware of who lived next door to the property, until I was told by the CWSA. My first reaction to the news of the large bill was anger as the property was empty for over two years. I spoke to Mr. Dalrymple who was employed at CWSA. I had suggested that maybe the meter was faulty or that the men had read it wrong, or maybe they did not even go and read the meter, but just send an estimated bill. It never occurred to me that the someone could have stolen the missing water until the theory was put to me by CWSA. I spoke to Mr. Dalrymple the latter who called one of the workmen who visited the property and spoke to the workmen in my presence. I did not have any doubt then what had happened to the missing water, also with the confirmation that the workmen had removed along with the meter a ½ inch plastic tube which was a connection. It was during that conversation that I learnt that it was the Matadials who were my neighbours. The workman did not look for leaks because they were satisfied after they turn off the overflowing tank by her stopcork that the water stopped flowing.

If there was a leak, then why did the reading on the meter fluctuate so much, the water loss would be consistent. I was promised by CWSA a full written report would be available to my lawyer should I need it. My then lawyer Bayliss Frederick did not receive the report as promised when it was requested. He telephoned Mr. Dalrymple of the Water Authority and I was asked to collect the report. I did collect a document which I was tricked into believing was the report but on return to Mr. Frederick's office I discovered it was not the promised report but something entirely different. Also, if Mr. Matadial had nothing to do with our water, as he says he needs to explain why he went all the way to Clare Valley to find our builder and tried to interfere with our witness Mr. Roberts."

[33] During her viva voce evidence Mrs. John said that she owns the property that is adjacent to the Matadial's property in Cane Gardens; at the time when she purchased her property she did not have any immediate neighbours. The apartments next door were not constructed. Mrs. John further stated that since she constructed the property she never lived in it and did not know the Matadials before she instituted the proceedings against them. In fact, the first time she met the Matadials was at the Magistrate Court. She said after she was billed for the water at a time when her property was unoccupied and that she was advised to take action against the Matadials. While she had met Mr. Toussaint some

years ago, she did not recognize him until she was approached by him while she was in the Magistrate Court's yard. Mrs. John said that Mr. Toussaint told her "why she was dragging Mr. Matadial into Court, when she could have easily gone and spoken to Mr. Matadial and have the matter sorted out". Mr. Toussaint told her that she should have met with Mr. Matadial and had the matter sorted out. She, in response, told Mr. Toussaint that she did not know who Mr. Matadial was but that she heard that he was unapproachable. She understood Mr. Toussaint to mean by "sorted out" that Mr. Matadial could easily afford to pay the money. She told Mr. Toussaint why Mr. Matadial did it in the first place and that is theft and that all of her work had to be put on a standstill because she could not get her water connected. Mrs. John admitted telling Mr. Toussaint that if Mr. Matadial paid her the sum of \$3,000 that she had to pay to Water Authority she would be willing to drop the case, even at that stage. She had no other conversation with Mr. Toussaint. Mrs. John said that she was refusing to pay a debt which she did not owe. She denied ever being approached about digging up the drain to look at the pipe. She said that the photographs that were tendered in evidence were taken by her just before the "last court hearing." HM 6 is a connection with a plastic pipe. She maintained that she saw the piece of pipe there and that it is something that feeds the Matadials' tank with her water. There was a lot of grass around the areas, however, she was certain that something was wrong so she cleared the guttering by cutting away the grass and saw the piece of pipe exposed. This is exactly how she saw it.

- [34] During cross examination by Mr. Commissiong, Mrs. John said that as far as she could have recollected, the photographs were taken a few weeks before the last hearing. She disagreed that the pipe that was shown to her in the photograph was a drainage pipe as stated by Mr. Matadial. She said that while the pleadings suggest that she lost water from April – May 2001 she now said that she made an error and that it was in 2000. Mrs. John said she bought the house in 1987 and returned to England thereafter leaving Mr. Cyprian Hypolyte in charge of her house for a couple of years. She did not doubt that she had asked Mr. Hypolyte to put tenants out of house – March 1999. She maintained that she complained about the water bill for March, April, May and June 2000. She next said that in September 1999, she discovered that the water was disconnected; in fact when the

tenants were leaving the property she requested that the water be disconnected. She maintained however when she received the large water bill her house was uninhabited at the time the period for which the bill covered. She said that before retaining Mr. Frederick she had consulted many lawyers all of whom had refused to take the case against the Matadials.

Mr. Lee

- [35] Mr. Lee in his witness statement said that he is a Senior Pipe Fitter at the Central Water and Sewerage Authority.

"I know Mrs. John. I visited Mrs. John's property to do a final disconnection and made several observations. The day before I had visited her premises and had seen a ½ inch PVC pipe that used to reconnect the service which fed the home of Mrs. John. From my observation I indicated that the tenant of the next door property Cane Garden Apartments was using the water."

In his viva voce evidence Mr. Lee said:

"I am a Senior Pipe Fitter at the Central Water and Sewerage Authority. I worked at CWSA for 30 years and I am a supervisor of meters. I deal with the installation, disconnection or for that matter anything to do with meters."

- [36] Mr. Lee admitted, under cross examination by Mr. Commissiong, that while he knew Mr. Matadial they are not friends. He said that he had a previous matter involving a loan that he had obtained from the CIBC bank and that Mr. Matadial was the bank's lawyer. He went to speak to Mr. Matadial in relation to the loan since the bank had sued him. Mr. Lee said that Mr. Matadial was abusive to him and denied that he in turn abused Mr. Matadial. Mr. Lee accepted that he testified against Mr. Matadial in the Magistrate Court and that he was aware that Mrs. John property was still registered with the CWSA in the name of James Phillips. Mr. Lee recalled that the workers of CWSA including Mr. Tyrone Olliver had received instructions to go to Mr. James Phillips' home which was unoccupied, to look at a leaking stop cork and to disconnect the service since payments were outstanding.
- [37] Further, Mr. Lee admitted, that in the Magistrate Court he had said that payments were outstanding. Mr. Lee told the Court that at Mrs. John's house he had turned off the stop

cork and realized when he did this that there was no leakage at Mrs. John's house. They disconnected the meter and took it away having put a half inch plug into the connection. Later, he had received a report from the meter reader, as a result of receiving that report he went to check Mrs. John's property and he observed that someone had tampered with the stop cork on Mrs. John's property and had pushed a piece of PVC pipe into the service line that fed Mr. James Phillip's property; and it was wasting a lot of water. Mr. Lee said that while he saw no pipe that ran from Mrs. John's property to Mr. Matadial's property, since the area was covered with grass, but according to his knowledge there had to be a pipe. He said that there was only an outside pipe that was left for James Phillips because the house was under renovation at the time when he visited the property. He said as a result of what he had observed, he took his general manager to the property and his manager instructed him to disconnect the service from the main. He and the manager visited the premises alone. Mr. Lee was adamant that neither Mrs. John nor Mr. Matadial was present at this time but maintained that after he had observed the correlation with the pipe/stop cork and Matadial's property he took his manager and they visited the premises. His manager went to the Matadial's residence and spoke to Mr. Matadial. Mr. Lee was sure that his manager then instructed him to plug the main. Mr. Lee was clear that the manager did not lead the team on its subsequent visit rather it was he (Lee) who had led the team. He maintained that Mr. Cummings was never on the team but rather that Mr. Cummings had instructed him. Mr. Lee maintained that when he returned to Mrs. John's property the following day and was searching for the main, Mrs. John came up in a vehicle and he told her that someone had tampered with the authority's service connection after they had plugged the pipe and that he was instructed to plug the service in the main. Mr. Lee said that when Mr. Cummings had visited Mrs. John's property on the one occasion only, Mr. Cummings' observation would have been different from what he (Mr. Lee) and Mr. Olliver had observed previously. He admitted that he testified in the criminal matter in the Magistrate Court.

- [38] Mr. Lee explained that the water meter has a detector with a dial and if the dial keeps spinning it indicates that the water is in use. He said when the stop cork on Mrs. John's property was turned off the tank at Matadial's apartment stopped running; but that when

the stop cork was turned on the meter on her property kept spinning. He insisted that when he turned off the stop cork on Mrs. John's property the tank on the Matadial's property stopped overflowing; when he turned on the stop cork, the meter started spinning and the tank on the Matadial's property started to overflow. In Mr. Lee's opinion the water which passed through the meter, either was wasting or being used on the opposite side of the property.

[39] Mr. Lee stated that he had access to CWSA records and was told that the apartments belonged to Mr. Matadial. He recalls that the adjoining property was registered in the name of Cane Garden Apartment in care of Mr. Matadial. While he is satisfied that Cane Garden Apartments own the apartments that adjoins Mrs. John's property he could not remember whether he had discovered this before the criminal case, even though he was sure that he would have checked CWSA's records.

[40] Mr. Lee said that he did not do comprehensive job investigating of the problem and he did not probe the problem in detail and thoroughly but he was sure where the problem came from. He insisted that Mr. Cummings made only vague observation. He was insistent that he told the Magistrate in the criminal trial that the stop cork on Mrs. John's property controlled the tank on Mr. Matadial's property. He said that he never saw the photographs that were tendered as exhibits, during the trial, prior to being shown then in Court and that he had never seen the pipe "sticking out", since the area was covered with grass. He knew of no offer by Mr. Matadial to dig up the drain.

[41] During re examination by Mrs. Bacchus Browne, Mr. Lee said that he had checked Mrs. John meter and was sure that there had been no leakage. Mr. Lee stated that no one had dug up the drain between Mrs. John's property and Mr. Matadial's property. He recalled telling the Magistrate that he noted when he turned on Mrs. John's pipe the tank on the Cane Garden Apartments overflowed; when you turned it off, it stop overflowing.

Mr. Olliver's Evidence

[42] Mr. Olliver stated in his witness statement that he is employed as a Pipe fitter for 15 years at CWSA.

“On or about June 2000 someone made a report to Central Water and Sewerage Authority about a faulty stop cork at the property of the defendant. Myself and another worker went to the defendant's property. We did not find a leak. We found that the stop cork was not working so the water could not be turned off. We found that Mrs. John's property was unoccupied and the yard was full of grass. I checked the meter it kept turning, so I looked for a leak. I went to an outside sink and there was no water at the tap. I felt it strange that there was no water at the tap yet the meter was running. I began looking at the drain between the property of the claimant and the defendant, to see if water was running from the house. There was no drain pipe from Mrs. John's property. While standing by the drain, I noticed that Mr. Hansraj Matadial's tank is close to the fence; I noticed that the tank was overflowing. It seemed it was overflowing for a long time because the outside of the tank was mossy. I repaired the defendant's stop cork and when I closed it off the tank stopped overflowing; I was surprised so I told my co-worker to turn on back the stop cork and he did and the tank started to overflow again and Mrs. John's meter started spinning again. So I left the stop cork turned off. I reported this to my supervisor, Mr. Ardon Lee. About a week or so later we were sent to disconnect the service for arrears. After this, it was reported that someone went and reconnected the service by fitting a pipe in the space where they removed the meter from. We went back and took out the pipe and closed the main supply valve and removed the piece of pipe and plugged it. The only way the water can flow to Mr. Matadial's tank when we turned on the stop cork on Mrs. John's property and stop when we turn it off is if there is some connection between the lines. Because of the way the yard was covered with grass and bush we could not trace the exact position of the pipe because it was buried. At the time when this piece of pipe was fitted back, to where we removed the meter, Mrs. John's property was unoccupied.”

[43] During cross examination by learned counsel Mr. Commissiong, Mr. Olliver said that in the Magistrate Court he had said that they went to check on the stop cork while Mrs. John's property was unoccupied. He maintained that he was of the view that it was strange that someone would call to report the difficulty with the stop cork when Mrs. John's property was unoccupied and the yard was full of grass. Having read the transcript of the proceedings in the lower court Mr. Olliver admitted that there was no record of his having

referred to the stop cork. However, he was sure that nothing outside of Mrs. John's property was leaking and that he did not find out if anything inside was leaking.

- [44] During re examination by learned counsel Ms. Bacchus Browne, Mr. Olliver said that he checked the water meter of Mrs. John's house and when the stop cork was turned off he did not observe the meter turning; If there was a leak inside of Mrs. John's house the water meter would still turn when the stop cork was turned off. However, when the stop cork was on the water meter began to turn. He said that the answers that he gave in the Magistrate Court were to specific questions asked of him and that he could not recall telling the Magistrate anything about a leakage.

Mr. Frederick's Evidence

- [45] Mr. Fredericks stated in his witness statement as follows:

"That sometime ago my client, Mrs. Cecilia John, came to my offices, related a series of facts to me and requested my taking action in the Courts against Hansraj Matadial and his wife for larceny of water. Before accepting her instructions I, next day, visited the offices of the CWSA and made certain enquiries. I spoke with a Mr. Dalrymple, the Accountant, TWO officers of the Authority; and the General Manager, by telephone. From the conversations I had it appeared to me that there was evidence of larceny of water and I therefore had a further visit by Mrs. John when I decided to lay criminal charges against Hansraj and Grace Matadial for larceny of water. The matter was laid in the Magistrate's Court, Kingstown. The day before the trial I took with Mr. Bassey Alexander, a licensed Land Surveyor, to the site of the alleged larceny and pointed out Mrs. Johns' lot of land, the Matadials' lot, the pipeline and its tracings to the Matadials' lot, the water tank of the Matadials' and Mrs. John's unfinished building. That very day the two witnesses, summoned on behalf of Mrs. John, telephoned my offices. I spoke to one of them who told me that a lawyer came to their work place and warned that that if they came to Court and gave evidence against Matadial they would loose their employment and as a result they would not be coming to Court. I told them, very sternly, that should they not attend as summoned I would request the Court to have them arrested and brought.

The trial started with my first witness, Mr. Bassey Alexander. I called this witness intending his testimony, as a Land Surveyor, would give to the Court an understandably clear lay-out of the area in which the larceny took place. To my utter surprise and dismay the witness' answers did not give accurate positionings of the lots adjoining Mrs. John's lot nor did the

witness state the position of the water tank of the Matadials and the witness gave an incorrect position of the pipe-line. During the said trial in the Magistrate's Court the other witnesses had related how they had discovered water overflowing from the Matadial's tank and this did not cease when they entered the Matadial's Lot and turned off their stop cork; but when they turned off Mrs. John's stop cork the Matadials' tank stopped overflowing. They said they manipulated the stop cork to make sure. They then made a report to the Authority's office.

There is a concrete drain newly constructed on the eastern side of Mrs. John's Lot running along the boundary past the Matadial's Lot on its western boundary. Mrs. John's Lot ends a very short distance along the Matadials' Lot. Both Lots are separated by the concrete drain for not many feet. On the northern corner of the Matadials Lot is a water tank with plumbing. I had pointed out to Mr. Bassey Alexander, the distance from Mrs. John's Lot to the Matadials' tank across the drain and that on both sides of the drain were concrete plainly more recent, different in colour and clearly a patching of the sides of the drain. Also the water pipe was plainly freshly worked upon most particularly because Mrs. John's service to her building is several yards north of the Matadials lot and water tank.

Mrs. John had given me her water bills and these together with her travel documents showed that while she was away with an unoccupied building her water bill showed an enormous consumption of water while the Matadials bills for their property at a time they were constructing buildings showed small amounts. I had requested the Water Authority to produce Books and the report made concerning Matadial and they refused.

Mr. Frederick stated further that he is a lawyer with in excess of 30 years experience"

- [46] Mr. Frederick, during cross examination by Mr. Commissiong, said that he and Mr. Matadial shared a good friendship at one time but that in 1999 he had cause to initiate proceedings against Mr. Matadial in the High Court and the latter was suspended from practice for one month, as a consequence. He said that he has forgiven Mr. Matadial for all of his wickedness. Mr. Frederick maintained that having received instructions from his client Mrs. John he visited the property and took an experienced surveyor to visit with him to Mrs. John's property. He thereafter instituted criminal proceedings in the Magistrate Court against Mr. Matadial for larceny of water. Mr. Frederick said that he lost the case in the Magistrate Court because he instructed the surveyor about what description he should give; instead the land surveyors went to the Magistrate's Court and did the reverse; this

Mr. Frederick said was the reason that he lost his case. As soon as the witness gave the evidence he turned to the defence and said "I lost my case".

[47] Mr. Frederick said that he did no search in order to determine the ownership of the Cane Garden Apartments before instituting the criminal proceedings but he was personally aware that the Matadials had built the apartments. While he had summoned CWSA to produce records in the Magistrate Court he could not recall them having appeared. He was showed the water bills by Mr. Dalrymple at the CWSA. He was sure that it was the Matadials who had consumed the water. Mr. Frederick said that initially when he visited the Matadial's premises it was being completed; the apartments were under construction. He subsequently heard that the apartments were fully rented.

[48] During re examination by Ms. Bacchus Browne, Mr. Frederick said that before instituting the criminal proceedings in the Magistrate's Court he went to the water authority and did investigations and at the time he was satisfied that it was the Matadials who were responsible for paying the bills; there were no tenants when he went there or else he would not have proceeded as he did. The construction on the Matadial's property was being completed. He stayed on Mrs. John's house and looked at the tank and pipe together with the Land Surveyor. Mr. Frederick said that he had no malice against Mr. Matadial.

Claimants' Submissions

[49] Learned counsel Mr. Commissiong submitted that this case raises one issue, did Mrs. John have reasonable and probable cause to prosecute the Matadials for larceny of water between the month of March 1999 to 9th June 2000 and that when she did so, did she do so maliciously? Mr. Commissiong urged the Court to find that Mrs. John did not have reasonable and probable cause to prosecute the Matadials.

[50] Mr. Commissiong referred the Court to the case of **Glinski v McIver [1962] 1 AER 696**, **Glinski** was arrested and charged for conspiracy, **Glinski** was tried and acquitted. He sued McIver for damages for false imprisonment and malicious prosecution. In this case,

which is a House of Lords case all the previous authorities were reviewed and authoritative statements were made on the law relating to malicious prosecution. **Lord Denning** at page 710 and 711 had this to say as to how a Claimant should go about proving his case.

“First, there are many cases where the facts and information known to the prosecutor are not in doubt. The Claimant has himself to put them before the court because the burden is on him to show there was no reasonable and probable cause. The mere fact of acquittal gets him nowhere. He will therefore refer to the depositions which were taken before the Magistrate: or he may refer, as here, to the statements taken by the police from the witnesses: and he will argue from thence that there was no reasonable or probable cause.

[51] Mr. Commissiong said that in this case the Court will notice that the Claimants in attempting to prove their case have put into evidence all the evidence which was led before the Magistrate by the Defendant.

[52] Before dealing with this matter and because frequent references were to be made to the phrase “*Reasonable and Probable Cause*” Mr. Commissiong set out at the definition which has been given to it by the judges over the years. Mr. Commissiong said as stated that in the case of **Hicks v Faulkner 1881 8Q.B.D** page 167, **Hawkins J.** gave a definition of what is meant by the phrase “*reasonable and probable cause*” at page 171 and 172 of his judgment as follows:-

“Now I should define reasonable and probable cause to be, an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonable lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be: first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly-mentioned belief must be based upon reasonable grounds; by this I mean such grounds as would lead a fairly cautious man in the Defendant’s situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.”

[53] Further, counsel referred again to the case of **Glinski v Mclver**, in which Lord Denning at page 709 letter (H) of his judgment had this to say of **Hawkins J.** definition of “*reasonable and probable cause*”

“My Lords, in **Hicks v Faulkner (15) HAWKINS, J.**, put forward a definition of “reasonable and probable cause” which later received the approval of this House. He defined it as an “honest belief...in the guilt of the accused” and proceeded to detail its constituent elements. The definition was appropriate enough there. It was, I suspect, tailor-made to fit the measurements of that exceptional case. It may fit other outsize measurements too. But experience has shown that it does not fit the ordinary run of cases. It is a mistake to treat it as a touchstone. It cannot serve as a substitute for the rule of law which says that, in order to succeed in an action for malicious prosecution, the Claimant must prove to the satisfaction of the judge that, at the time when the charge was made, there was an absence of reasonable and probable cause for the prosecution”

[54] In the same case of **Glinski v Mclver, Lord Radcliffe** in his judgment at page 708 letter (D) puts the matter of “reasonable and probable cause” in this way:

“But after all, the facts that are to be attended to cannot be just any facts; they must be such facts as, taken together, point to a case of the offence charged. They must be fraud facts, or theft facts or conspiracy facts. No doubt to take a view as to what these amount to is in a sense to form an opinion on a question of law, for it implies an idea as to what are the requisite conditions of the legal offence. But I do not see any complication in this, for an ordinary sensible man does have a general idea as to what these offences consist in; and if in particular case an intending prosecutor has no such idea or the offence in question is complicated or special, I take it that he would be expected to suspend action until he had resorted to legal advice on it.”

[55] Mr. Commissiong referred the Court to a number of other authorities in support of his contention. He said that Lord Goddard in the case of **Timms v John Lewis and Co Ltd, (1952) AC page 676** said:

“The question whether there was a reasonable or probable cause is not, I think, to be determined subjectively, as has been suggested. It is a question which objectively *the Court has to decide on the evidence before it.*”

[56] Again in the case of **Glinski v Mclver, Viscount Simmonds** at page 701 at letter (F) of his judgment had this to say:

“That is the course that a reasonable man would take and, if so, the so called objective test is satisfied.”

[57] Mr. Commissiong submitted that for the reasons hereinafter set out, that at the time when Mrs. John prosecuted the Matadials, she had no reasonable and probable cause and she did so maliciously.

[58] The reasons relied on by Mr. Commissiong are as follows: At the trial, three persons from the CWSA testified. Daniel Cummings, the General Manager of CWSA, Ardon Lee and Tyrone Olliver, two employees of the CWSA. Daniel Cummings in his witness statement, in the last line of paragraph 3, stated as follows:-

“The CWSA’s personnel verbally informed Mrs. John of this on the site”.

At paragraph 10, he stated as follows:-

“Although the correlation between the closing of the stop cork on the Mrs. John’s property and the overflowing tank on the Matadials’ property, appeared odd, nothing that was observed by me or the members of the technical team could lead to the conclusion that there was cheating. If there had been evidence of cheating, the CWSA would have taken immediate action by disconnecting the Matadials’ water supply, imposing a fine or instituting legal proceedings against the Matadials.”

Mr. Commissiong said that from the evidence of the then General Manager, Daniel Cummings, how the defendant could state that “she acted reasonable on proper advice from the Central Water and Sewerage Authority.” CWSA is a statutory corporation set up by an act of Parliament (Chapter 287) of the Laws of the State of Saint Vincent and the Grenadines. In other words, CWSA is a juristic person and any decision must come from its executive body.

[59] Mr. Commissiong next referred the Court to second limb of Mrs. John’s defence: “...she acted reasonable on proper advice from ...her then Solicitor Bayliss Frederick.” Mr. Commissiong submitted that, as will appear from the authorities set out, that acting on competent legal advice is only a factor to be taken into account in deciding whether Mrs. John had reasonable and probable cause for prosecuting the Matadials.

[60] Mr. Commissiong said that it is to be noted here that Mrs. John in her defence never stated that she acted on competent legal advice, but that she acted on proper advice from Bayliss Frederick. Mr. Bayliss Frederick in his evidence before this Court has not stated his competency in matters of this nature, as a matter of fact he has not given any evidence as to his competency in any field of the law save to say that he is a legal practitioner who practices within the jurisdiction of the High Court of the State of Saint Vincent and the Grenadines. No evidence was given as to what advice he gave to Mrs. John and on what instruction it was given.

[61] Mr. Commissiong said that Bayliss Frederick, in his witness statement at paragraphs 2, 3 and 4 stated the steps he took and came to the conclusion to prosecute the Matadials for larceny of water. As was stated earlier, the taking of legal advice is only a factor to be considered in deciding whether a Defendant has reasonable and probable cause for prosecuting.

[62] Mr. Commissiong said that the 1st known case in which this issue of legal advice has arisen is the case of **Ravenga v Mackintosh 2B & C 451**. The head note to the case reads as follows:-

“It is a good defence to an action for a malicious arrest that the Defendant, when he caused the Claimant to be arrested, acted bona fide upon the opinion of a legal adviser to competent skill and ability, and believed that he had a good cause of action against the Claimant. But where it appeared that the party was influenced by an indirect motive in making the arrest, it was held to be properly left to the jury to consider whether he acted bona fide upon the opinion of his legal adviser believing that he had a good cause of action.”

In this case it was held that the Defendant had no cause of action and that malice was proved in that the Defendant had an indirect motive in arresting the Claimant to induce him to sanction the debentures given by Mendez.

[63] Next, Mr. Commissiong referred the Court to **Abbot v Refuge Assurance Co. Ltd [1962] 1 QB 432**, it was held inter alia that the opinion of competent and experienced counsel, when fully and fairly informed on all the relevant facts, was an important factor which a

reasonable man was entitled to take into account in deciding whether to prosecute, but that it was not necessarily conclusive and that, of itself, it could not furnish reasonable and probable cause for a prosecution”

[64] Dealing specifically with the claim against Mrs. Matadial, Mr. Commissiong said Mrs. John’s entire case in this matter was based throughout on whose name the water bills were in. No evidence was led in this case as to any wrongdoing on the part of Mrs. Matadial. The evidence which was led in the Magistrate’s Court has been put into evidence before this Court and a summary of it is given in paragraph 3. At this stage the Court will have to ask itself the question, does this evidence, at the time when the charge of theft was made disclose reasonable and probable cause for a charge of theft to be made? Mr. Commissiong submitted that the test to be applied is an objective test. It is so obvious that by any stretch of the imagination how on that evidence Mrs. Matadial could have been accused of theft? It was so obvious that at the trial in the Magistrate’s Court the Solicitor for the Defendant Mrs. John, conceded this.

[65] Mr. Commissiong submitted that Mrs. Matadial has discharged the burden of proof that at the time when the charge of theft was made against her Mrs. John had no reasonable and probable cause for doing so.

[66] Next, Mr. Commissiong dealt with the claim of Mr. Matadial. Mr. Commissiong stated that the reason why Mr. Matadial was prosecuted is basically stated again in paragraph 5 of Mrs. John’s defence. The water bills were put in evidence. What is strange is that Mrs. John never took the trouble of bringing the person from CWSA to testify to say that he or she was the person who told Mrs. John that the water bills were in the name of Mr. Matadial. Then why are you prosecuting him? Asked Mr. Commissiong. You have not seen him do anything to tamper with Mrs. John’s water supply. The water bills are not in his name. It is in the name of a company called Cane Garden Apartment Ltd. Mr. Matadial is not a director or shareholder in the company. Based on the above, then how could Mrs. John say that she had reasonable and probable cause to prosecute him? Asked Mr. Commissiong.

[67] Next, Mr. Commissiong submitted that at the time when the complaint was filed, Mrs. John had no reasonable and probable cause for preferring a charge of theft against Mr. Matadial. The matters raised by Mrs. John, argued Mr. Commissiong and taken at the highest may amount to mere suspicions, but does it ever approach the level of suspicion of the guilt of the Matadials? In **Clerk and Lindsel on Torts 18th Edition at paragraphs 16 – 27**, this is what the author had to say “It is not justifiable to commence a prosecution on mere suspicion.” To support his submissions Mr. Commissiong stated that Mrs. John herself at paragraph 2 of her witness statement stated “It never occurred to me that the someone could have stolen the missing water until the theory was put to me by the CWSA.” Here Mrs. John speaks of “theory” without any connection to the Matadials. The witness Ardon Lee formulated a theory as to how Mrs. John’s water could have been diverted. In the last sentence of his witness statement, he stated “any evidence of the connection would be hidden under the drain.” Mrs. Commissiong argued that in view of these circumstances that the Court should conclude that Mrs. John had no reasonable and probable cause to prosecute the Matadials.

[68] Further, Mr. Commissiong said the Court is asked to find from the point of view of the reasonable man that when this prosecution was launched there was no reasonable and probable cause for launching the said prosecution bearing in mind the following facts:-

- (i) That the consumption of water on the property of Cane Garden Apartments Ltd. at the material time was excessive.
- (ii) That the property was occupied by tenants and that the tenants were responsible for paying their water rates.
- (iii) That the Matadials were not in physical occupation of the premises.
- (iv) That no one saw the Matadials tampering with the Defendant’s water supply.
- (v) That the manager saw no cheating or cross connection and this was told to Mrs. John before the prosecution.
- (vi) That after the filing of the complaint but before the trial of the Claimants in the Magistrates’ Court Mrs. John’s agent Cyprian

Hypolite was enlightened as to the true state of the facts in this case.

(vii) The water bills were not in the Matadials' name.

[69] Mr. Commissiong then stated that in event that the Court is not in agreement with the submissions that he has made, he further submitted that Mrs. John had no reasonable or probable cause for the following reasons: where a charge is divisible or it consists of separate constituent parts, if there is reasonable and probable cause for some and there is no reasonable and probable cause for others and he's prosecuted, that would be prosecution without reasonable and probable cause. Counsel next submitted that at the time when Mrs. John filed her information accusing the Matadials of theft of water to the value of \$3,000.00 for the period of March 1999 to 9th June 2000, that she had no reasonable and probable cause for doing so. The evidence Mrs. John led, argued Mr. Commissiong, showed that Mrs. John was required to pay \$2,071 and not \$3,000 as she claims.

[70] Next, Mr. Commissiong submitted that at the time when the complaint was filed Mrs. John was actuated by malice and did prosecute the Matadials maliciously. He referred the Court to the case of **Glinski v McIver** in which, Lord Devlin at page 714 letter (F) defined malice as follows:-

"Malice, it is agreed, covers not only spite and ill will but also any motive other than a desire to bring a criminal to justice"

A good example of malice is the case of **Ravenga v Mackintosh** earlier quoted where the Lord Chief Justice in directing the jury stated "...and that he made the arrest not with a view of obtaining his debt but to compel the plaintiff to sanction the debentures..."

[71] Mr. Commissiong posited that the defence in this case is unprecedented; Mrs. John has not hidden her motive for prosecuting the claimants. Mrs. John has shown it in her own defence by making a counter-claim against both Claimants for the sum of \$3,000.00 Mr. Commissiong said that in this matter Randolph Toussaint testified on behalf of the Matadials, there were some disagreements as to whether Randolph Toussaint approached Mrs. John or whether it is Mrs. John who approached Randolph Toussaint, but what is clear is that Mrs. John in examination in chief stated as follows:-

"I told him (meaning Randolph Toussaint) that even at this stage if Mr. Matadial paid me \$3,000.00 I am prepared to drop the charge."

Added to this, in the witness statement of Mr. Matadial he stated as follows:

"The Defendant stated to me that she was not interested in any bills and that she was going to fight my wife and I until she recovered her \$3,000.00 and that she would make sure that this case be given maximum publicity."

[72] Mr. Commissiong advocated that the only inference to that could be drawn is that Mrs. John's only desire in prosecuting the Matadials was to obtain from them the sum of \$3,000.00 and which sum they were never indebted to her for; that this was an improper motive amounting to malice in law. He argued that Mrs. John had the additional motive to destroy the credit and reputation of the Matadials.

[73] Mr. Commissiong argued that Mrs. John and or her agent published the charges against the Matadials intending to injure their reputation and credit.

[74] Accordingly, Mr. Commissiong argued that the Matadials are entitled to be compensated by Mrs. John for the false and malicious prosecution. In support of his contention counsel referred the Court to **Merson v Cartwright 1994 BHSJ No 54, No 1131 of 1987**

Defendant's Submissions

[75] In response, learned counsel Mrs. Bacchus-Browne asked the Court to find the following facts. In 1987 Mrs. John and her husband purchased a property at Cane Garden. At the time the land which is owned by the Claimants a company under their control was vacant. Mrs. John lives in England and has been living there for over 36 years. She has never resided in the Cane Garden property whose water bill is still in the name of her predecessor in title James Phillips. Mrs. John never knew the Matadials until she met them at the Kingstown Magistrate Court when they appeared to answer a suit brought against them for theft of her water. In or about 1998 when the last tenant left her property Mrs. John had the water and electricity disconnected. She requested her then agent Mr. Hypolite to reconnect the water so she could do renovations. The CWSA did not reconnect Mrs. John water because of arrears. When Mrs. John returned to Saint Vincent in 2001 to

renovate her property she discovered that the water had not been reconnected for arrears. Upon enquiry she learnt to her dismay that her property owed \$3,0000 in water. Mrs. John visited CWSA and confronted them because she did not live in the house and there should have been no outstanding water bill. Mrs. John was then informed by Mr. Dalrymple of CWSA that the Matadials lived next door and Mr. Lee explained about the illegal connection between her stop cork and the Matadials' water tank which was the Matadials water tank had been overflowing for sometime until moss had gathered on the tank. Mr. Lee explained someone had called CWSA to report that Mrs. John's stop cork was not working. He further explained that when they went to visit the property and the stop cork was turned off the Matadials tank stopped overflowing. When they turned it back on the tank overflowed again. It was the CWSA who explained to Mrs. John that someone must be stealing her water and that it had to be the Matadials. It was not until then that Mrs. John formed the belief with good reason that the Matadials had stolen her water.

[76] Mrs. John sought legal advice and it was upon the advice given that she decided to institute the charges in the Magistrate Court. She had visited several lawyers before she found someone willing to do the case that was not afraid of the Matadials. Mrs. John's lawyer Mr. Frederick visited the property and discovered a fresh piece of concrete right at the area of the boundary which hid the obvious connection between Mrs. John's tap line and the Matadials' tank. This was drawn to Mrs. John's attention and this supported her honest belief that Mr. Matadial had stolen her water.

[77] Mrs. Bacchus Browne asked the Court to find that at no time did Mrs. John have malice for the Matadials. She had reasonable and probably cause and honestly believed them to be guilty. Mrs. Bacchus Browne said that it was Mr. Toussaint who approached Mrs. John and asked her to settle. Mr. Toussaint supports the fact that Mrs. John did not know the Matadials. She could not therefore have malice for them. She simply wanted her money she was forced to spend because of the theft as she believed.

[78] Mrs. Bacchus Browne stated that the Magistrate Court case was stopped because the witnesses changed their evidence thereby forcing Mr. Frederick to stop the case. In any

event, the Magistrate's Court transcript is incomplete, brief, and does not make sense in many parts.

- [79] Mrs. Bacchus Browne asks the Court to find further that Mr. Daniel Cummings could not have done a thorough inspection as he said. The grass between the boundary was not cut. It was when Mrs. John herself had the grass cut the evidence of the illegal connection became visible as per the exhibits of the photographs. The visit to the locus quo showed clearly that the Defendant's conclusion was reasonable and without malice.
- [80] Mrs. Bacchus Browne argued that the evidence of Mr. Constance, Mrs. Matadial's witness is contrived and cannot explain the connection between the stop cork and the Matadials' tank.
- [81] Mrs. Bacchus Browne further submitted that Paragraph 10 of the Mrs. Matadial's own expert witness Daniel Cummings, the past manager of CWSA is fatal to their Claim. The expert says the connection between the stop cork and the overflowing tank was odd and on cross-examination he agreed that the conclusion of Mrs. John was a probable conclusion. Mrs. Bacchus-Browne therefore submitted that Mrs. John at all times acted honestly and had no direct or indirect motive capable of grounding malice against the Matadials. Thus **Blackford v Dod**, **Ravenga v Mackintosh** are distinguishable in so far as they address the issue of malice.
- [82] Mrs. Bacchus Browne said that the fact that Mrs. Matadial was prosecuted shows Mrs. John had no malice against the Matadials per se but sought to charge the owners of the house adjoining hers as she was advised.
- [83] Next, Mrs. Bacchus Browne stated that it does not matter whose name the water bills are in, a company can be sued by its alter ego. De facto the Matadials are the controllers of Cane Garden Apartments as far as Mrs. John reasonably believed.

[84] Mrs. Bacchus Browne disputed that the Cane Garden Apartments' water bill was excessive, indeed it was not. The connection of the overflowing of the Matadials' water tank with the turning on of the John's stop cork is a powerful and conclusive factor in determining the honest belief of Mrs. John stated Mrs. Bacchus Browne.

[85] Next, Mrs. Bacchus Browne stated that the Matadials in this matter must prove:

- (a) That Mrs. John prosecuted them;
- (b) That the prosecution ended in the their favour;
- (c) That Mrs. John lacked reasonable cause;
- (d) That Mrs. John acted maliciously.

The above elements must be proved. Mrs. Bacchus Browne conceded (a) and (b) have been proved. However Mrs. Bacchus-Browne submitted that (c) and (d) have not been proved.

[86] Mrs. Bacchus Browne agreed that reasonable and probable cause depends upon the information and belief of the Defendant.

"There must be a reasonable cause – such as would operate on the mind of a reasonable man; at all events such as would operate on the mind of the party making the charge; otherwise there is no probable cause for him: I cannot say that the Defendant acted on probable cause, if the state of facts was such as to have no effect on his mind."

[87] In **Herniman v Smith** the House of Lords approved the definition of reasonable and probable cause by **Hawkins J in Hicks v Faulkner**,

"An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonable lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed." **Clerk & Lindsel** on para 19-22

[88] Mrs. Bacchus Browne postulated that the cases show "reasonable" and "probable" cause mean about the same thing. It is for the Matadials to prove that Mrs. John did not have reasonable and probable cause not for her to prove that she had. Indeed, even the

Matadial's own witness, Mr. Daniel Cummings was at a loss to explain the "oddity" of the "connection" and admitted that inference of the connection was probable. **Lord Devlin Glinski v McIver** said reasonable and probable cause "means that there must be cause (that is sufficient grounds) for thinking that the Plaintiff was probably guilty of the crime imputed". The prosecutor only has to feel there is a fit case to be tried and not that she will probably get a conviction". Mrs. John did not have to test the full strength of the defence; though in her case the matter was conceded by the prosecutor because of withholding problems with the witness and not because the case was weak per se.

[89] Mrs. Bacchus Browne submitted that the Matadials has failed to prove that Mrs. John was unreasonable in all these circumstances. In fact, Mrs. John has proven, though she did not need to, that she did have reasonable cause. It was the Water Authority who informed Mrs. John of the illegal connection and led her to reasonably believe that the Matadials were stealing her water.

[90] In further support of her contention, next Mrs. Bacchus Browne referred the Court to Winfield on Tort ninth edition at page 493 states,

"In many cases the issue of reasonable cause raises only one question, namely, whether the facts admittedly known to and believed by the prosecutor when he launched the prosecution furnished him with reasonable and probable cause for doing, and in such cases there is no question to be left to the jury. This question is for the judge alone. Moreover, if the prosecutor knew, or, rather, though he knew, certain facts, it matters not that those facts turn out to be false. "The Defendant can claim to be judged not on the real facts but on those which he honestly and however erroneously, believes; if he acts honestly upon fiction, he can claim to be judged on that."

[91] Mrs. Bacchus Browne said that the judge's concern is essentially with the objective aspect of the question-whether there was reasonable and probable cause in fact-but the overall question is a double one, both objective and subjective: Did the prosecutor actually believe and did he reasonably believe that he had cause for prosecution?

- [92] Mrs. Bacchus-Browne stated that anger is not malice. The Matadials have failed to prove that Mrs. John acted maliciously. She did not even know the Matadials before the case and was even willing, if repaid her money she felt she paid to the Water Authority unfairly, to stop the case. This clearly shows she had no malice to have the Matadials convicted. See p **496 Winfield on Tort 9th edition**. Mrs. Bacchus-Browne also referred the Court to **Glinski v McIver 1962 1 AER pg 696**; Tort Cases And Materials by **Hepple & Matthews**. See also **Clerk & Lindsel on Torts 16th edition paragraph 1-70; 19-01 to 19-51**
- [93] Mrs. Bacchus Browne stated that another legal issue relevant here is whether Mrs. John acted under legal or other competent advice. Mrs. Bacchus Browne said that since Mrs. John clearly acted under competent legal advice she is in all events justified in acting upon it. Counsel referred to **Lord Bailey in Ravenga v Mackintosh [1824] 2 B&C 693**. Mrs. John did not only act upon information received by the Central Water & Sewerage Authority (CWSA) she obtained competent legal advice and then she acted Paragraph 19 – 29 **Clerk & Lindsel on Torts 16th Edition**. There is no evidence whatsoever that Mrs. John did not honestly believe her water has been stolen by the Matadials. She honestly still believes this to this day based on reasonable and probable cause. It is however not necessary for her to hold a positive belief in the guilt of the accused (Paragraph 19-31, 19-33). Finally, Mrs. Bacchus Browne said that Mrs. John here did not act on mere suspicion. The physical link between her stop cork and the overflowing of Mr. Matadials water tank was very real indeed. There is no other possible explanation for the “oddity of the connection.” Mrs. John had no other reasonable countervailing evidence.”
- [94] Accordingly, Mrs. Bacchus Browne argued that the Matadials have failed to establish their claim against Mrs. John.
- [95] Counsel posited that Mrs. John is entitled to be compensated.

Court Analyses and Findings

- [96] I have given careful consideration to the evidence adduced in the case at Bar and have perused the exhibits and transcript that were placed before the Court. I have also paid particular regard to the very helpful submissions made by both learned counsel. The Court's visit to the locus in quo proved very useful. I propose now to deal firstly with the evidence adduced in the case.
- [97] Learned Counsel Mr. Commissiong sought to persuade the Court that the Mrs. John and her witnesses should not be believed however, I am of the view that the witnesses called on behalf of Mrs. John were very credible and struck me as very truthful. Despite the counsel's vigorous cross examination of the witnesses I have no doubt that the technical witnesses called on behalf of Mrs. John were very forthright and sought to assist the Court in its determination of the issues. I was particularly impressed with the evidence of Mr. Olliver and Mr. Lee both of whom simply told the Court what they saw and the conclusions to which they came. I do not hold the view that they had any ulterior motive in testifying in the way they did.
- [98] Let me say straightaway that for the most part the evidence of Mr. Cummings, the Matadials' witness gave me cause for pause. I must state that Mr. Cummings in testifying was not as forthcoming as he ought to have been; accordingly where Mr. Cummings' evidence conflicts with that of Mr. Lee and Mr. Olliver, I accept Mr. Lee and Mr. Olliver's evidence in preference to his. In my respectful view, Mr. Cummings struck me as a witness of convenience. This was unlike Mr. Olliver and Mr. Lee both of whom were integrately involved in investigating Mrs. John's complaints (to which I would refer shortly) and they unlike Mr. Cummings did not seek to withhold their true views from the Court.
- [99] I must state however, in relation to Mr. Frederick's testimony that I got the clear impression that having done research, Mr. Frederick was convinced of and that he so advised his client of his belief in the Matadials guilt. It would be remiss of me however, if I did not state that it was clear to me that Mr. Frederick appeared only too willing to prosecute the

Matadials once he was convinced that they had stolen Mrs. John's water and that he had the requisite evidence in order to so prosecute.

[100] In relation to Mrs. John, I was very impressed with her candour and honesty. She struck me as a simple witness who at no time sought to mislead the Court and was interested in telling the truth at all times. Having observed her demeanour and listened carefully to her evidence, including that elected in cross examination that sought to test her evidence-in-chief, I am convinced that she was forthright and straightforward. I have absolutely no doubt that in prosecuting the Matadials she acted on the legal advice of Mr. Frederick coupled with the technical advice that she received from the CWSA. Mrs. John was convinced that her water was stolen and that the persons who were stealing her water were the Matadials. While there is no doubt that she was angry I am of the respectful opinion that she was not actuated by malice in prosecuting the Matadials.

[101] The Matadials are obviously aggrieved at their prosecution by Mrs. John. I must state that quite interesting Mrs. Matadial presented a better picture as a witness and her testimony withstood skilful cross examination in a manner that Mr. Matadial's evidence did not. Even in relation to the amplification by Mr. Matadial of his evidence in chief, it is with respect that I state, Mr. Matadial was far from a convincing witness. Mrs. Matadial was a very unshakable witness whereas on occasion Mr. Matadial resiled from earlier evidence that he had given.

[102] I attach very little weight to Mr. Constance's evidence since I was far from persuaded that he was simply telling the truth. It was obvious to me that his real reason for testifying as he did was to bolster the Matadials' case. In my respectful view he is not a very credible witness.

[103] Be that as it may, the following represents my finding of facts. Mrs. John who ordinarily resides in the United Kingdom bought property situated at Cane Garden in Saint Vincent and the Grenadines. The Matadials have their family home also at Cane Garden, Saint Vincent and the Grenadines. Located near to Mrs. John's property are a set of apartments

(the Cane Garden apartments) owned by a company the Cane Garden Apartments Ltd. Mrs. Matadial is the sole director of the company. The Cane Garden Apartments are registered in the company's name. The apartments were constructed subsequent to Mrs. John's purchase of her property and are rented to tenants. The tenants of the apartments have their own independent meters that record their consumption of water. In addition, there is a water tank situate on the Cane Garden Apartments. Mrs. John and her family never lived in her property situate at Cane Garden, she however had rented the premises to tenants and after the tenants had vacated her property the CWSA disconnected the services for arrears or rates. Thereafter, the property remained unoccupied.

[104] Subsequently, Mrs. John received bills for water rates from CWSA which she considered to be high since during the period covered by the water rates her property was unoccupied. She made reports to and enquiries of personnel of CWSA and received information which caused her concern. As a result of the reports that Mrs. John had made personnel from CWSA visited her home and were alarmed to find that someone had tampered with the disconnection that they had made and had placed a PVC pipe in the main that was attached to Mrs. John's property; the effect of this was to reconnect the water supply to her premises. Mrs. John was unaware of the reconnection and did not authorize it.

[105] The CWSA personnel who visited Mrs. John's property observed a correlation between Mrs. John's property and the tank situate on the Cane Garden Apartments as stated above; when the stop cork on Mrs. John's property was turned on the tank on the Cane Garden Apartment overflowed and vice versa. At the time when the correlation was observed Mrs. John's property was overgrown with grass and was uninhabited. The personnel saw no physical interconnection between the water tank on the Cane Garden Apartment and Mrs. John's property but they were convinced that one existed. Let me say again, that the visit to the locus in quo proved very useful to the Court since the Court was able to observe the close proximity between the two properties and saw the location of the water tank in relation to Mrs. John's pipe. There was a drain also between the two properties.

- [106] Armed with the information which Mrs. John received from personnel "about a theory" from CWSA, she consulted Mr. Frederick who is an experienced lawyer and instructed him. At all times, Mrs. John was of the view that the Matadials owned the Cane Garden Apartments, in fact the apartments were owned by a company as stated earlier.
- [107] Mr. Frederick had been friends with the Matadials but the relationship between them, by then, had gone sour. Mr. Frederick did research and based on the instructions that he had received from Mrs. John and information obtained from personnel from CWSA, the latter who showed him records in relation to the properties, Mr. John took a qualify surveyor to survey Mrs. John's property and inspected it. Mr. John was convinced based on the research he had undertaken coupled with the instructions he had received from his client that the Matadials had committed the offence of larceny.
- [108] Communications were had between Mrs. John and her solicitor Mr. Frederick and Mrs. John and CWSA personnel which led her to believe, and I have no doubt that she honestly and genuinely believed, based on both the legal and technical advise that she received that the Matadials (whom she thought had owned the apartments based on information that she had received) were stealing her water. However, before retaining the services of Mr. Frederick, Mrs. John had consulted other lawyers in Saint Vincent and the Grenadines who had declined her brief. She eventually instructed Mr. Frederick the latter who was convinced that he had a winnable case against the Matadials.
- [109] Mr. Frederick instituted criminal proceedings against the Matadials for larceny of the water (and this can be regarded as the genesis of the claim and the counterclaim). In the Magistrate Court apart from the fact that the Matadials were represented by eminent Counsel, apparently Mr. Frederick's main witness did not testify in accordance with Mr. Frederick's instructions. It appears as though the surveyor did not provide the Magistrate with any proper location of the two properties. After Mr. Frederick had closed it case Learned Counsel appearing on behalf of Mr. Matadial made a no case submission which Mr. Frederick was forced to concede. Mrs. John's prosecution of the Matadials was

thereby brought to a halt and with the Magistrate upholding the Matadials' no case submission the Matadials were acquitted.

[110] During the Mrs. John's prosecution of the Matadials, the trial received publicity in Saint Vincent and the Grenadines. Mrs. John, during the trial in the Magistrate Court, told Mr. Toussaint that she was only interested in being reimbursed the sum of \$3,000 which she was forced to pay for a debt that she did not incur.

[111] The Matadials being aggrieved by Mrs. John the prosecution of them instituted the present claims against her while Mrs. John has counterclaimed against them for the \$3,000.00 which she says she was forced to expend for water rates that she did not incur.

[112] I have no doubt that at the time when she instituted the proceedings while Mrs. John honestly and genuinely believed that the Cane Garden property was owned by the Matadials, it was not. It is also clear to me that Mr. Frederick, Mr. Olliver and Mr. Lee were also of a similar, albeit erroneous view. What is even more interesting is that, even the two witnesses called on behalf of the Matadials laboured under the same misapprehension that it was the Matadials who were the owners of the Cane Garden Apartments. Further, Mrs. John remains convinced that her water was stolen by the Matadials. In passing, I have no doubt that Mrs. John's water was diverted to the tank on the Cane Garden Apartments hence the correlation which I find did exist.

[113] Based on the evidence as adduced, I am satisfied that while the Cane Garden Apartments were owned by a company, Mrs. Matadial as the sole director managed the affairs of the company and attended to administrative matters in relation to the company. As it turns out, Mr. Matadial had nothing to do with the company even though he did admit in evidence that he supervised the construction of the tank that is situate on the Cane Garden Apartments.

Legal Submissions

[114] I come now to address the legal submissions. I have perused all of the authorities very helpfully referred to by both learned counsel and reviewed the submissions in entirety. I however, do not propose to repeat the authorities that were very ably analysed by both learned counsel. However, I must acknowledge that I find the principles enunciated in **Hicks v Faulkner** *ibid* and **Glinski v McIver** to be very instructive and applicable to the case at Bar.

[115] I have no doubt that it is for the Matadials to prove to the satisfaction of the Court that when the charges were made, there was an absence of reasonable and probable cause for the prosecution. See: **Timms v John Lewis at p 676**. I am also guided by the principles stated in **Ravenga v Mc Intosh** which state that “it is a good defence to an action for a malicious arrest; that the defendant when he caused the claimant to be arrested acted bona fide upon the opinion of a legal adviser of competent skill and ability, and believed that he had a good cause of action against the claimant”

[116] I also find very persuasive Lord Radcliffe’s dicta stated at page 708 in **Glinski v McIver** in which he deals with reasonable and probable cause and stated that:

“All of the facts that are to be attended to cannot be just any facts; they must be such facts as, taken together, point to a case of the offence charged. They must be fraud facts, or theft facts or conspiracy facts. No doubt to take a view as to what these amount to is in a sense to form an opinion on a question of law, for it implies an idea as to what are the requisite conditions of the legal offence. But I do not see any complication in this, for an ordinary sensible man does have a general idea as to what these offences consist in; and if in a particular case an intending prosecutor has no such idea or the offence in question is complicated or special, I take it that he would be expected to suspend action until he had resorted to legal advice on it.”

I also find very persuasive the definition approved by the House of Lords in *Herniman v Smith* [1938] AC 305 of “reasonable and probable” cause namely:

“An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true would reasonably lead any ordinary prudent and cautious man, placed in the position of the

accuser, to the conclusion that he person charged was probably guilty of the crime imputed.”

[117] Having determined the facts as I have done and applying the principles stated above I am afraid that the Matadials have failed to establish that there was no honest belief in their guilt, founded upon reasonable grounds, of the existent of a state of circumstances which, assuming them to be true, would reasonably lead a prudent and cautious man, placed in the position of Mrs. John, to the conclusion that they were probably guilty of the crime.

[118] Based on the totality of the circumstances, I have no doubt that any reasonable and prudent man armed with the knowledge of the circumstances would have objectively concluded that the Matadials were guilty of the offence; as Mrs. John was at the time when she instituted the criminal proceedings. To put another way, the Matadials have failed to prove that an honest and reasonable prudent man armed with the knowledge that Mrs. John had would not honestly have concluded that they were guilty of the offences with which they were charged. It is not sufficient for the Matadials to establish that the real facts establish no criminal liability against them unless it appears that those real facts were within Mrs. John’s knowledge. Further, there is no obligation on Mrs. John to furnish particulars of reasonable and probable cause See: **Stapley v Anetts [1970] 1 WLR 20**.

[119] In passing, I must hasten to add that I am convinced that Mrs. John did honestly believe in the justice of her case against the Matadials, even though her belief may well have been erroneous, as it turned out.

[120] I also find very instructive and apt statement made by Flemming – **the Law of Torts (8th Ed) 1992 at p 609** namely:

“The tort of malicious prosecution is dominated by the problem of balancing two countervailing interest of high social importance: Safeguarding the individual from being harassed by unjustifiable litigation and encouraging citizens to aid in law enforcement.”

[121] Bearing in mind the above, I am of the respectful view that Mrs. John was not bound before instituting proceedings to see that she has such evidence to secure a conviction.

Neither was it necessary that Mrs. John should act only on legal advice and enquires into everything first hand. It is sufficient if she proceeded on such information as a prudent and cautious person may reasonably accept in the ordinary affairs of life and it is for the Matadials to satisfy the Court that there was a want of proper care in testing the information See: **Brown v Hawkes [1891] 2 QB 718.**

[122] In coming to the conclusion as I have, I also pay regard to the fact that Mrs. John acted on the advise of a lawyer who had more than 30 years experience (and I would dare say that she was entitled to believe that she was justified in so doing); as if enough; she received technical advice from personnel of CWSA all of which led her to be convinced that the Matadials were stealing her water; this taken with the excessive water bill for her property that was uninhabited must be strong and compelling to an ordinary prudent person who would no doubt have reasonable and probable cause in believing in their guilt, even if that prudent person were later found to have been wrong.

[123] By the way of emphasis, the onus is on the Matadials to prove that no reasonable and probable cause existed for their prosecution, this with respect they have failed to do. In addition, the Matadials have failed to establish that there were no reasonable grounds for the belief. In a nutshell, the Matadials have failed to discharge the burden placed on them.

[124] Accordingly, I hold that that Matadials have failed to establish want of reasonable and probable cause and I accept that this defect is not supplied by their attempt to establish malice on the part of Mrs. John, which in my view did not exist. Mrs. John simply wanted to be reimbursed the money she expended and in my respectful opinion had no malice at all against the Matadials. She was convinced that they had stolen her water; even though it turns out, she wrongly held that view. For all of the above reasons, I have no doubt that the Matadials have failed to establish their claim against Mrs. John.

[125] I propose now to deal with Mrs. John counter claim against the Matadials for the \$3,000. I must state that I am of the view that she has failed to establish any cause of action against the Matadials in relation to same. Further, I am not at all persuaded, based on the

evidence that was led on her behalf, that she has proven that it was the Matadials who were responsible for diverting the water from her apartment to the Cane Garden Apartments. I am equally not satisfied based on the evidence that they were complicit in the diversion based on the evidence before the Court.

[126] Accordingly, I am not of the view that Mrs. John is entitled to be compensated in the sum of \$3,000.00.

Conclusion

[127] In conclusion and in view of the foregoing premises, I dismiss Mr. Hansraj Matadial and Mrs. Grace Matadial's claim for malicious prosecution against Mrs. Cecelia John. I also dismiss Mrs. Cecelia John counterclaim against the Matadials for compensation in the sum of \$3,000.

[128] I make no order as costs.

[129] I must place on record my gratitude to both learned counsel for their very helpful and lucid arguments.

Louise Esther Blenman
High Court Judge

PS

The conclusion of the hearing of this matter took far longer than I would have expected and this despite my best efforts, in the main this was occasioned by administrative difficulties, over which I have no control and which are well known to all concerned. The Court nevertheless apologizes for the delay.