

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2014-00911**

**IN THE MATTER OF THE FIRE SERVICE ACT CHAP. 35:50**

**And**

**IN THE MATTER OF THE FIRE SERVICE ASSOCIATION OF  
TRINIDAD AND TOBAGO (SECOND DIVISION)**

**Between**

**DAVE SENNON**  
(Ag. General Secretary)

**ASHTON CUNNINGHAM**  
(Vice President)

**DEXTER NOEL**  
(Assistant Secretary)

**KWASI LEWIS**  
(Assistant Secretary Piarco)

**LEO RAMKISSOON**  
(Assistant Secretary North West)

**DEXTER JAMES**  
(Assistant Secretary Tobago)

**ROGER WALLACE**  
(Assistant Secretary Tobago)

**Claimants**

**And**

**GILLIAN LEWIS**  
(President)

**GARVIN VINCENT**  
(Treasurer)

**AVA QUACCOO**  
(Executive Secretary)

**NIGEL GEORGE**  
(Trustee)

**MORELLA GEORGE**  
(Trustee)

**Defendants**

**BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES**

**Appearances:**

Claimants: Ms. Hyacinth Griffith  
1st, 2nd & 4th Defendants: Mr. Orin Kerr and Ms. Kerri Kitson  
3rd Defendant: Mr. Phillip Wilson and Ms. Janelle K. Benjamin  
Date of Delivery: 15th July 2021

**JUDGMENT**

[1] By Amended Claim Form, filed on 11th June 2015, the Claimants sought the following Reliefs against the Defendants:

- a. A Declaration that the purported Management Committee meeting of the Fire Service Association of Trinidad and Tobago (Second Division) (hereinafter “the FSA”) held at the Communication Workers Union Hall, 146 Henry Street, Port of Spain on the 24th February 2014 was contrary to the constitution and/or rules of the FSA (the Rules) and consequently was null, void and of no effect.
- b. A Declaration that the decision taken at the said meeting to pay Juliet Robert-Antoine, Attorney at Law (the Attorney), the sum of six hundred thousand (\$600,000.00)dollars (hereinafter “the decision”) is null, void

and of no effect and does not in any way bind the FSA and/or its members.

- c. An injunction restraining the Defendants from taking any steps or doing anything to give effect to and/or to implement the decision.
- d. An Order directing the Guardian Asset Management Fund of #1 Guardian Drive, West Moorings to stop all transactions relating to the FSA until further direction and/or order.
- e. Such further or other relief as may be just.
- f. Costs.
- g. Damages for fraud and/or the repayment of the sum of six hundred and forty (\$600,040.00) dollars.

### **THE CLAIM**

- [2] The Claimants were the Acting General Secretary, Vice President, Assistant Secretary, Assistant General Secretary Piarco, General Secretary North West, Assistant Secretary Tobago and Assistant General Secretary Tobago respectively and the Defendants were the President, Treasurer, Executive Secretary and Trustees respectively of the FSA. Both the Claimants and the Defendants are members of the FSA.
- [3] The FSA was formed pursuant to the provisions of the **Fire Services Act Chap. 35:50** and the functions and business of the FSA are governed by the Rules of the FSA.
- [4] The First Defendant, on the 17th February 2014, caused the Third Defendant to call what purported to be a Management Committee meeting of the FSA for the 24th February 2014 (hereinafter “the questioned meeting”). This was so even though there was a Central Executive Committee meeting on the 22nd February 2014 and a Finance Committee meeting on the 25th February 2014 and all members required to attend a Management Committee meeting would have been present at both meetings.

[5] The following persons who were members of the Management Committee of the FSA did not receive any notice of the questioned meeting or a copy of the agenda for the said meeting:

Kwasi Lewis – Assistant Secretary Piarco

Leo Ramkissoo – Assistant Secretary North West

Ashton Cunningham – Vice President

Dexter James – Assistant Secretary Tobago

Roger Wallace – Assistant Secretary Tobago

Dave Sennon – Acting General Secretary

[6] The President under sub-rule 40(e) has the power to call meetings of the Management Committee whenever he deems it necessary to protect and promote the interest of the FSA and its members. Rules 31, 32, 33 and 34 govern the conduct of Management Committee meetings. Rule 33 provides:

*“33. Notice of the convention of Management Committee meetings together with a copy of the Agenda must be served on each committee member at least four (4) days prior to the meeting.”*

[7] Attending the questioned meeting, apart from the defendants, were three (3) non-members of the Management Committee - Michael Mc Intyre an ex-Vice President, Lennox London an ex-President, and Earl James an ex-Assistant Secretary.

[8] At the questioned meeting a decision was taken to pay to the Attorney, the sum of six hundred thousand (\$600,000.00) dollars. The records of the FSA are under the care and control of the General Secretary, the First Claimant. There is no record of the questioned meeting. The Third Claimant, Dexter Noel, was appointed the Recording Secretary for the purpose of keeping a true and proper record of the deliberations of every management Committee meeting. He was not present at the questioned meeting. Rule 38(2) of the Rules provides as follows:

*“(2) A true and proper record of the deliberations of every Management Committee meeting must be made by the Recording Secretary.”*

- [9] The Attorney had written a pre-action protocol letter claiming monies from the FSA allegedly for work done. At a previous Management Committee meeting it was agreed that negotiations should be entered into with the Attorney and instructions were given to one Mr. Kenneth Thompson, Attorney at Law to negotiate with the Attorney and to offer the sum of one hundred and fifty thousand dollars (\$150,000.00) and not to exceed in the negotiations the sum of two hundred and fifty thousand (\$250,000.00) dollars.
- [10] The Claimants contended that the questioned meeting was contrary to the constitution and/or rules of the FSA and was consequently null, void and of no effect; and further, that the decision taken at the said meeting to pay the Attorney, the sum of six hundred thousand (\$600,000.00) dollars was null, void and of no effect and did not in any way bind the FSA.
- [11] The First Defendant purporting to act as President of the FSA, and the Fourth and Fifth Defendant purporting to act as trustees of the FSA made a request of the Guardian Asset Management Fund to break an Investment Fund held by the FSA, which said Fund is held by the FSA for and on behalf and/or as Trustees of the members of the FSA.
- [12] Since the filing of the Claim Form and Statement of Case herein, the claimants pleaded that the defendants unlawfully and fraudulently acting on the purported decision to pay to the Attorney the sum of six hundred thousand (\$600,000.00) dollars, taken at the purported management meeting which was null, void and of no effect on the 24th February 2014, did the following acts:
- a. On the 17th March 2014, attended the First Citizens Bank, Park Street, Port of Spain branch and caused to be issued two manager’s cheques to the Attorney drawn on the account of the FSA from account number 75015194770 the sum of one hundred and sixty five thousand eight hundred and sixty four dollars and one cent (\$165,864.01) and from

account number 1171836 the sum of thirty forty thousand one hundred and thirty five dollars and ninety nine cents (\$34,135.99);

- b. On the 17th March 2014 attended the Republic Bank Ltd, Ellerslie Court Branch, applied for temporary cheque leaves and upon obtaining same backdated a cheque to the 26th February 2014 and issued same to the Attorney in the sum of \$100,020.00 which said cheque was encashed on the same day; and
- c. On the 17th March 2014 attended the Republic Bank Ltd, Murray Street, Woodbrook branch and caused to be issued a cheque to the Attorney in the sum of \$300,020.00 from account number 510001539802. The said cheque was encashed on the same day.
- d. On the 18th March 2014 the First, Second, Fourth and Fifth Defendants tendered their resignation from the Executive/Management Committee of the FSA.

[13] The Claimants pleaded further that the said acts and things<sup>1</sup> were done fraudulently with the intention of fraudulently depriving the FSA, whom the Claimants represent of the sum of six hundred thousand and forty dollars (\$600,040.00). The Claimants pleaded the following Particulars of Fraud:

#### **PARTICULARS OF FRAUD**

- a. The Defendants knew or with reasonable diligence ought to have known that the President of the FSA under Sub Rule 4(e) of the Rules may call a Management Committee meeting when he deems it necessary to protect and promote the interest of the FSA and its members. The President however on the 24th February 2014, called a meeting to protect the interest not of the FSA or its members, but of a non-member, namely, the Attorney.

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<sup>1</sup> Para 12 above

- b. The Defendants knew or with reasonable diligence ought to have known that Rule #33 of the FSA provides that notice of the convention of a Management Committee meeting together with a copy of the agenda must be served on each committee member at least four days prior to the meeting; the seven members<sup>2</sup> referred to above were not served with Notice or Agenda. Further, only the Defendants attended that meeting by arrangement among themselves. There was no Notice, no Agenda and no minutes and/or record of that meeting.
- c. The Defendants well knew that there was an ongoing dispute between the Attorney and the FSA regarding her requisitions and that the Executive Members were not in favour of settling the said requisitions in part or at all.
- d. Consequently, the Defendants knew that the questioned meeting and the decision were null, void and of no effect and that it was unlawful to act on the said decision.

[14] The Claimants contended that by reason of the matters aforesaid, they as members of the Management Committee of the FSA and as members of the FSA have suffered loss and damage.

**AMENDED DEFENCE OF THE FIRST, SECOND, THIRD AND FOURTH NAMED DEFENDANTS**

[15] These Defendants admitted that payments were made to the Attorney as pleaded by the claimants in their Amended Statement of Case<sup>3</sup>. They however alleged that the claimants were aware of the Management Committee's decision to settle the Attorney's alleged debt.

[16] They pleaded that the monies were paid to the Attorney in the honest belief that such monies were owed to her as professional fees earned and were requisitioned in good faith by the Attorney in full settlement of an audited claim

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<sup>2</sup> See Paragraph 5 above

<sup>3</sup> Paragraph 13 of the Amended Statement of Case

that was in excess of the sum paid. The defendants contended that this was a legitimate payment of an outstanding debt.

[17] In further explanation for the payment, the defendants averred that the said payment was made pursuant to:

- a. an audit report from accountants retained by the Claimants on the 6th September 2010 to conduct an investigation into the payment of legal and professional fees by the FSA during the period 1st January 2004 to December 21st 2009.
- b. the Management Committee made a decision to pay the sum to the attorney after negotiations with her.

[18] It was contended that the protracted negotiations with the Attorney was occasioned by the lack of bona fides by the Claimants who had no intention of paying the outstanding fees to the Attorney. The Defendants also pleaded that the First Claimant was 'motivated by malice.'<sup>4</sup>

[19] By letter dated 12th August 2013 directed to the Attorney, the FSA invited her to engage in discussion with a view to settlement.

[20] The Defendants counterclaimed against the Claimants for:

- i. malicious falsehood
- ii. abuse of process
- iii. damages
- iv. costs.

### **EVIDENCE FOR THE CLAIMANT**

[21] Dave Sennon and Ashton Cunningham testified on behalf of the Claimants and were cross-examined. At trial, Mr. Orr represented the First, Second and Fourth Defendants while Mr. Wilson represented the Third Defendant.

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<sup>4</sup> Para 12 of the Defendant's Amended Defence filed on 23rd March 2016



**Dave Sennon**

[22] He testified as follows<sup>5</sup>:

- a. that in December 2013 he was co-opted as General Secretary of the FSA and served in this role from the 6th February 2013 to December 2014. He also served as Assistant Secretary from 14th December 2014 until his retirement in January 2017. His duties as General Secretary/Assistant Secretary were governed by the provisions of the Rules.
- b. the Rules are the governing laws of the FSA, and specify the roles and functions of its officers. Rule 42 of the Rules concerns the office of the General Secretary and specifies the duties and powers of this officer. As Acting General Secretary he was the Principal Executive Officer of the FSA. His responsibilities included the general administration of the FSA and he was directly responsible to the FSA's Management Committee.
- c. he was also responsible for managing the day to day affairs of the office reporting to management on the affairs of the FSA, ensuring that everything is done within the rules. Additionally, he served as the Chief Grievance Officer and was responsible for representing members of the FSA at disciplinary tribunals.
- d. the General Secretary is also the head of the FSA's Secretariat and as Treasurer, he was responsible for and authorized to issue and review all correspondence of the association, summon meetings of the FSA's Management Committee after consultation with the President of the FSA and in accordance with the standards outlined by the Rules. He also prepared and circulated the agenda for such meetings and ensured that the minutes of the proceedings of such meetings were recorded accurately.
- e. in the years prior to him assuming the post of Acting General Secretary he was an active member of the FSA and regularly followed the executive's activities and attended meetings. The Attorney, Mrs. Juliet Roberts-Antoine was engaged

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<sup>5</sup> Witness Statement of Dave Sennon filed on 31st January 2019

by the FSA from time to time during the period 2006-2010 to conduct legal business on its behalf.

- f. at a Management Committee meeting in February 2013, after he became Acting General Secretary, he was provided with a letter dated 17th January 2012 sent by the Attorney, claiming compensation by way of fees in the sum of two hundred and fifty thousand dollars (\$250,000.00) for what was described as outstanding matters.
- g. the Management Committee instructed him to respond to the letter and engage in open discussion and negotiations with the Attorney with a view to settlement. Accordingly, on August 12th 2013, he wrote to the Attorney on behalf of the FSA's Management Committee acknowledging the receipt of her claims for compensation, which were engaging the FSA's attention and requested that she provide a statement of indebtedness with certified copies of the cheques and copies of any cheques issued to her to enable the FSA to review same and take necessary steps to address the claim and resolve all the outstanding matters.
- h. a response to this letter was received on 30th September 2013, from Mrs. Robert-Antoine's attorney-at-law, Mr. Mobota who claimed that the FSA was indebted to the Attorney in the sum of two million dollars (\$2,000,000.00) and further claimed that interest had accrued on this sum from 2002-2010, amounting to three million nine hundred and sixty thousand dollars (\$3,960,000.00) and one million and eighty thousand dollars (\$1,080,000.00) from 2010 – 2013.
- i. this letter was noted under incoming correspondence at the meeting of the FSA's Management Committee on 8th October, 2013. The Management Committee voted to approve the engagement of an attorney at law to respond to Mrs. Roberts-Antoine's attorneys regarding the settlement of outstanding debts.
- j. in a subsequent letter dated 11th November 2013, Mr. Mobota wrote the FSA indicating that Mrs. Roberts-Antoine had instructed him to propose a "one off" lump-sum payment of six hundred thousand dollars (\$600,000.00) inclusive of all interest accrued to date. The letter further advised that immediate payment

of the sum would be required upon submission of Mrs. Robert-Antoine's invoices, though no invoices were submitted to the FSA by the Attorney. The letter indicated that that proposal was valid for 7 days from that date.

- k. at the FSA's Management Committee meeting on the 12th November 2013, the letter of the 11th November 2013 was noted and the Committee voted unanimously to retain Mr. Kenneth Thompson, attorney at law, to negotiate a settlement with Mrs. Antoine through her attorney, Mr. Mobota.
- l. the Management Committee agreed to retain Mr. Thompson to negotiate a settlement of the Attorney's claim within a range of one hundred and fifty thousand dollars(\$150,000.00) up to a maximum of two hundred and fifty thousand dollars(\$250,000.00). The Committee determined that a sum within these parameters would be reasonable in the circumstances to bring this matter to a conclusion. This decision was reduced into writing and sent to Mr. Thompson by letter dated 13th December 2013.
- m. in or around December 2013, he was summoned to the Central Police Station to meet with inspectors from the Fraud Squad who informed him that there was certain information against him reported by the President of the FSA. He was told that the President had accused him of selling raffle tickets, collecting funds and never returning funds. He asserted that these accusations were false, malicious and he believed they were intended to undermine him and the office of the General Secretary. He never collected raffle tickets or funds for a raffle and further, no raffle was ever held. After my conversation with the inspectors, no further action was taken. However, he left the police station with serious concerns about the first named defendant's actions.
- n. on 8th January 2014, Mr. Thompson wrote to him indicating that the Attorney had rejected the FSA's attempt at negotiating a full and final settlement in the sum of two hundred and fifty thousand dollars (\$250,000.00) and was threatening legal action.
- o. on 27th January 2014, he wrote to the Management Committee and Central Executive Committee to refer the first named defendant to the FSA's

disciplinary committee for breaches of the Rules and for failing to conduct the business of the organization in a fit and proper manner. It had come to his attention that the first named defendant had been instructing members of the FSA's administrative staff, in particular the third named defendant, who then served as Executive Secretary, to communicate and issue correspondence on behalf of himself as the General Secretary of the FSA, without his knowledge and in breach of the rules.

- p. he informed the committees of the false reports that had been made against him and of the overreach and actions the President which had hampered the proper operation and functioning of the FSA in the discharge of its duties to the third parties and members. She also failed to convene a meeting of the Disciplinary Committee against a former Trustee who had been the subject of a complaint.
- q. on 28th January 2014, he attended a meeting of the FSA's Finance Committee and brought the contents of the letter to the attention of the members present. The Committee resolved that at the next Management Committee meeting carded for 11th February 2014, a committee would be selected to engage the service of an attorney in conjunction with the President, the General Secretary and the Trustees to address the stalled negotiations and work towards resolving the outstanding debt.
- r. in light of his concerns over breaches of the Rules in the operation of the FSA's offices, he wrote to the third named defendant on 3rd February 2014, who, as Executive Secretary was a member of staff who reported to him, acted under his direction and supervision. In that letter he cautioned her against conducting business transactions on behalf of the FSA without consulting or communicating with him. He reminded her of the role of the General Secretary and the need for accountability to management in the conduct of the FSA's transactions. He also instructed her to cease this conduct with immediate effect, and also instructed her to bring all transactions, financial and otherwise to his attention prior to engagement.

- s. on 9th February 2014, the first named defendant appeared on national television and radio broadcasts in her capacity as President of the FSA and stated to the public that the FSA was being sued for two million dollars. He was shocked by this development as at this stage negotiations with the Attorney were at a stalemate and had, until that point, been conducted in confidentiality. Moreover, at that stage no legal proceedings had been instituted claiming any such sum against the FSA. The President neither informed nor consulted with him prior to issuing this statement on behalf of the FSA. Further, at the Finance Committee meeting on 28th January 2014, the President and other members had resolved to meet with the Management Committee on the 11th February 2014 to select a team to continue the negotiations with another attorney. As a result of this surprise statement, the proposed meeting on the 11th February was not held.
- t. on 11th February 2014, the third named defendant responded to his letter of 3rd February 2014, indicating among other things, that the actions she had engaged in were as a result of confirmed minutes of meetings of the executive only, and that she customarily would act on instructions received from the President and Treasurer in addition to himself. This statement confirmed his concerns that the first and second named defendants had been acting in breach of the Rules. The third named defendant's response caused him some concern, as the Rules expressly provide that the General Secretary is responsible for the management and supervision of the FSA's offices and its administrative staff. The third named defendant also indicated that she was handing over all the keys for the office.
- u. by letter dated 14th February 2014, he again communicated with the third named defendant reminding her of the provisions of the Rules and the need for proper communication of the affairs by the FSA to the General Secretary and her role and function within the context of the FSA's office staff in compliance with the Rules. He also asked her to abort her decision to hand over the keys and to consider the destabilizing effect any brash actions could have on the FSA's operations.

- v. on 19th February 2014, he wrote to the FSA's Central Executive Committee outlining his concerns about a possible conflict of interest and breach of trust on the part of the first named defendant in relation to the Attorney. The conflict and breach arose out of a claim which had been filed by the Attorney against the FSA on 20th December 2013. The first named defendant was named as a defendant in those proceedings and was being represented by the Attorney in other proceedings which were ongoing and engaging the attention of the Registrar General.
- w. he was concerned that there was a clear conflict of interest having regard to the closely related proceedings all involving the first named defendant, and the Attorney. The President's conduct as outlined above formed the subject of complaint against her to the Disciplinary Committee. As a result of the foregoing, Mr. Sennon wrote to the Central Executive requesting that the President recuse herself from presiding over any meetings of the Management or Central Executive Committee while an investigation was conducted into her actions.
- x. the FSA's Central Executive Committee met on 22nd February 2014 to consider, among other things, the issues raised in the letter of the 19th February 2014. The first, second, fourth and fifth defendants were served notices of the meeting but were absent. No excuses were received. The meeting was initially called to order at 10:15a.m. and was stood down for thirty minutes. When the meeting was re-convened, a motion to refer the first named defendant to the FSA's Disciplinary Committee was carried. A further motion to convene a special general meeting to treat with the issues raised in the letter was also carried.
- y. on 24th February 2014, he attended two disciplinary tribunals at the Fire Station in Savonetta, in his capacity as Acting General Secretary and Chief Grievance Officer. He was out of office for most of the day and was before the tribunal from 9:00a.m. to approximately 3:00p.m.

### ***Cross Examination of Dave Sennon***

- [23] Mr. Sennon's evidence during cross examination was consistent with his evidence in chief. In answer to Mr. Kerr, he revealed that no invoices from the Attorney had ever been received by the FSA.
- [24] The First Claimant reiterated that he received no notice of the meeting called by the President of the FSA on the 24th February 2014 which authorized payment of six hundred thousand (\$600,000.00) to the Attorney. Mr. Sennon also stated that seven days' notice of the Management Committee meeting is required by the Rules.
- [25] On the 25th February 2014, Mr. Sennon attended a joint meeting of the FSA's Finance and Management Committees at the FSA's headquarters. The President, Treasurer and Trustees who are the first, second, fourth and fifth defendants respectively, were absent. At that meeting, it was noted, among other things, that the fees to Mr. Kenneth Thompson in relation to his attempts at negotiation with the Attorney were settled. It was further noted that the committee which had been proposed at the previous Finance Committee Meeting, to engage an attorney in consultation with the President, Treasurer and General Secretary to address the outstanding debt with the Attorney, was not finalized.
- [26] After consideration of the report concerning breaches of the rules, breaches of trust and confidence and conflicts of interest, the management voted unanimously in favour of a motion that the first named defendant recuse herself from chairing the FSA's meetings pending the findings of the Disciplinary Committee which had been previously appointed by the Central Executive Committee. He was instructed to immediately write to the President outlining the decision and to confirm instructions to the Vice President to temporarily assume the chair of future meetings until the outcome of the investigation. The Committee also agreed that a special general meeting should be held on March 25th 2014 to address the allegations against Mrs. Lewis.

[27] He testified that later in the proceedings, when the floor was opened to members to indicate any concerns, a member asked the committee members present the following questions:

- i. whether an agreement had been made to pay the Attorney six hundred thousand dollars (\$600,000.00);
- ii. who were the members that had participated in this decision;
- iii. what justification had been presented for the decision.

Mr. Sennon stated that he was entirely unaware of any such decision and was surprised by this enquiry, since to his knowledge, the Committee had previously decided to make no further payments to the Attorney until there was a reconciliation of the accounts. Other persons present made serious allegations which suggested improper conduct on the part of the Financial Secretariat, and he was gravely concerned. The Management of the FSA agreed to put on hold all approvals for the disbursement of funds.

[28] During the period 25th February 2014 to 10th March 2014, he began preparing to pay salaries to the FSA's administrative staff and settle its monthly bills; he was unable to locate the FSA's cheque books, vouchers and bills to ensure that their rent, utilities and other payments were made. He made several searches for these documents and became concerned that they appeared to be missing. He was very concerned as the cheque books and vouchers were always kept in the office and were under the control of and in the possession of the Executive Secretary who kept same in her custody for safe keeping. The practice regarding the cheque books is that these documents were not removed from the FSA's office in the ordinary course of things.

[29] The FSA's offices also housed a vault. In the course of his search, he found that he had no access to the vault as it was locked. He discovered that the Secretary was absent and he could not contact her; the Trustees were also not available and had taken the keys and the code to the vault. After searching for some days, he arranged for a locksmith to come to the office to open the vault and the missing vouchers and some cheque stubs and record books were found. He did not find the FSA's cheque books.



[30] On 11th March 2014, he attended another meeting of the Management Committee. The President, Trustees and Treasurer were again absent from the meeting and had never returned the keys or the code for the safe nor had they returned the cheque books. The Fourth and Fifth defendants indicated that they would not be attending the meeting. He informed the Vice President, who was chairing the meeting in the President's absence of the missing documents. Mr. Cunningham then instructed the first named claimant to invite the third named defendant, the Administrative Secretary, to the meeting, so she could assist the committee in determining the whereabouts of the vouchers for January 2014 and the location of the FSA's cheque books. He invited the Executive Secretary as instructed, and she told the meeting that all the vouchers for January 2014 and the cheque books were taken away from her by Trustee Nigel George, but she had failed to report this to the Management Committee or himself. Subsequent thereto, a lengthy discussion was held among the members present and it was unanimously decided that Treasurer Garvin Vincent and Trustee Morella George be relieved of their duties within the FSA with immediate effect due to their failure to carry out their functions in accordance with the FSA's Rules.

[31] This immediate removal was possible because these two members were co-opted and not elected members of the Management of the FSA. Nigel George however was an elected officer and the procedure for his removal was different. Based on the third named defendant's report, a decision was also taken by the Management Committee to lodge an official report with the police, with a view to taking steps as necessary to protect the FSA and its funds. The Management also co-opted a new Treasurer and two Trustees namely Fern Mitchell, Nigel Lampkin and Jevon Perch for a period of three months.

[32] On 12th March 2014, he was alone at the FSA office. A decision had been made to temporarily close the office because of the unauthorized removal of documents from the premises reported at the previous management meeting. While he was there he received a phone call from Ms. Analise Murphy of Guardian Asset Management Limited, who asked to speak to the third named defendant. He told her that the Executive Secretary, Ms. Quacco, was not there.

She informed him that the Fourth and Fifth Defendants had presented a letter signed by them by which they sought to break the FSA's fund held at Guardian Asset Management Limited in order to withdraw the sum of six hundred thousand dollars (\$600,000.00); she wished to confirm whether this instruction had been legitimately issued by the FSA. He told Ms. Murphy not to dispense such funds and requested a copy of the letter.

[33] Mr. Sennon testified that the Rules require that a request to transfer funds from the FSA's accounts be signed by the Trustees in conjunction with the President and General Secretary. After he received and reviewed the correspondence received from Ms. Murphy, he saw that it bore the fourth and fifth defendant's signatures and was on the FSA's letterhead, which contains the names of himself and the first named defendant in print. The only two persons who had access to the FSA's letterhead at that point to conduct correspondence were himself, the first named defendant and the third named defendant. He had no prior knowledge of the issue of this letter, had never seen it before and a copy had not been filed on their in-office files which was the usual practice. Further, that letter had not come to the attention of the Management Committee for approval, as mandated by the rules, nor did the Executive Secretary ever bring it to his attention.

[34] This telephone call seemed to confirm what had been alleged about "a secret decision" to pay out the funds of the FSA to the Attorney without a valid resolution of the Management and Finance Committees. Following the telephone call, he delivered by hand a letter dated 12th March 2014 to the Manager of Guardian Asset Management Limited, West Moorings, on the instructions of the Management Committee requesting that all payment out of the FSA's investment fund held there be frozen.

[35] On 12th March 2014, he also wrote to Republic Bank Limited, Ellerslie Plaza informing of the appointment of new trustees at the previous Management Committee Meeting, and terminating all previous orders of authorization given to the bank. Similar letters were issued to First Citizens Bank Limited and Republic Bank Limited, Woodbrook.

- [36] Following these letters he informed the Management Committee, by telephone, of what had transpired. Emergency discussions were held among Management Committee members and a decision was made to retain the service of an attorney at law, Abdel Ashraph to initiate proceedings in the High Court and seek injunctive action to stop the funds being paid out. On 17th March 2014 an ex parte injunction was granted restraining the defendants, by themselves, their servants and/or agents or howsoever otherwise, from taking any steps or doing anything to give effect to the decision made by them to pay the Attorney the sum of six hundred thousand dollars (\$600,000.00 TTD) and in particular from breaking or in any way interfering with the investment fund of the Fire Services Association of Trinidad and Tobago (Second Division) held with the Guardian Asset Management Fund at #1 Guardian Drive, West Moorings.
- [37] On 19th March 2014, he received letters of resignation via fax from the first, second, fourth and fifth named defendants. By letter of that same date he wrote to the Manager of RBTT Bank Limited, Independence Square Port of Spain, informing them that the Trustees Nigel George and Morella George and President Lewis were no longer members of the FSA and requested that a hold be placed on all of the FSA's accounts and that the above mentioned be removed as signatories from the accounts.
- [38] On 19th March 2014, he also attended Republic Bank Limited, Ellerslie Plaza with Mr. Cunningham, the Vice President and Mr. Lampkin a Trustee and had discussions there with the Manager. The Manager gave him a copy of a letter dated 17th Mach 2014, signed by the former Trustees requesting temporary cheque leaves. He saw that one of the requested cheques, in the sum of one hundred thousand and twenty dollars (\$100,020.00) appeared to have been issued and purported to have been issued/dated the 26th February 2014 and that all the cheques at that branch had been issued to be paid to the order of Mrs. Juliet Roberts-Antoine and the cheques were encashed on the 17th March 2014. Following that meeting, he requested copies of the transaction records for the FSA's account at Republic Bank Limited, Woodbrook branch. From these records he discovered a cheque for three hundred thousand and twenty dollars (\$300,020.00) had been drawn on the account on 17th March 2014.

- [39] Sometime in or about 21st March 2014, he received a phone call from First Citizens Bank Limited, indicating that they had received a letter from the FSA's Secretariat, notifying them of the changes in the FSA's trustees and signatories on the account. He was told that that very date of the letter, money had been withdrawn from the account. Subsequently, he requested bank statements from First Citizens Bank and confirmed that a withdrawal of one hundred and sixty five thousand, eight hundred and sixty four dollars and one cent (\$165,864.01) had in fact been made on 17th March 2014 and further, that six withdrawals amounting to one hundred and eighty four thousand, one hundred and seventy three dollars and forty-nine cents (\$184,173.49) had been made from the FSA's business account during the month of March 2014. A further thirty four thousand, one hundred and thirty-five dollars and ninety nine cents (\$34,135.99) were withdrawn from the FSA's investment account in the Abercrombie fund on the 17th March 2014 at the same bank. He observed that the authorization form for this withdrawal bore the signatures of the fourth and fifth named defendants and were dated 17th March 2014.
- [40] On Tuesday 25th March he attended a meeting of the Finance Committee where the resignations of the former Treasurer and Second Defendant, Garvin Vincent and Trustees and Fourth and Fifth defendants, Nigel George and Morella George were tendered. However, it was noted in the meeting that the Second and Fifth Defendants had been relieved of their duties and offices at the previous Management Committee meeting on 11th March 2014. It was decided that the five defendants would be referred to the Disciplinary Committee. Subsequent to that meeting, by letter dated 27th March 2014, he circulated to the general membership, the names of the members of Executive Committee following the series of resignations. He subsequently notified the FSA's membership of the resignation of Ms. Gillian Lewis and Mr. Nigel George by letter dated 28th March 2018.
- [41] On 4th April 2014, he attended an emergency Management Committee meeting at which it was agreed that there be a forensic audit and gap analysis into the operations of the FSA's office and to undertake this exercise the FSA retained the auditing firm of Henry Tyson and Associates Company Limited. Following

this decision on 7th April 2014, he wrote to the Commissioner of Police, under the direction of the Management Committee to report the unlawful removal of the Association's cheque books by Mr. Nigel George and the return of same.

[42] The First Claimant testified that the cheques had been issued deliberately by the defendants with the intent to defraud the FSA. He stated further that the said cheques were utilised to facilitate the unlawful and/or fraudulent withdrawal of the funds from the accounts of the FSA by persons acting for and on behalf of the Attorney and in whose name several cheques were encashed on or about 17th March 2014. The unapproved withdrawals from its accounts had negatively impacted the finances and operations of its Secretariat which forced the FSA to secure a loan in order to meet the recurrent expenses of the FSA.

[43] Mr. Sennon revealed that a further impact from the defendants' withdrawal of this sum from the FSA's accounts was the utilization of members' dues to meet the day to day expenses of the FSA. Late payments by members resulted in the failure by the FSA to make payments to creditors. The FSA was also impeded in its ability to pay suppliers from month to month because of a cash flow problem caused by the unlawful actions of the defendants outlined above.

### ***Ashton Cunningham***

[44] The Second Claimant filed a witness statement in which he testified that<sup>6</sup>at all material times he was the Vice President of the FSA from December 2011 to December 2014; he also served as General Secretary from December 2014 to present.

[45] Prior to 2010, he served as Trustee to the FSA, from 2005 to 2007. He knew the Attorney during this time undertaking legal work on behalf of the FSA, and was part of the team negotiating with her for a settlement of outstanding fees. Mr. Cunningham revealed that he was a member of the Finance Committee which terminated the Attorney's retainer during 2005-2007.

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<sup>6</sup> Witness Statement of Ashton Cunningham filed on January 31st 2019.

- [46] In 2009, after he had left the office of trustee, he learned that the Attorney's services had been reinstated and subsequently terminated as a result of concerns regarding the issue of professional fees being charged and the discharge of her professional duties. At the Annual General Meeting in 2010, the issue of the quantum of her fees charged, and the actual work, that was done and whether there should be payment of her requisition/fees charged was an ongoing concern that had to be addressed by the FSA.
- [47] He received a copy of an Auditor's Report and observed that the auditors, PFK Limited, had made several findings regarding the payments made to and claimed by the Attorney. Among these findings was the fact that in several instances they were unable to locate approvals by the Management or Finance Committees for payments which had been made to the Attorney. He also noted that several invoices which had been submitted disclosed no particulars or basis for the fees requisitioned and several invoices and statements of work done were duplicated. As a result of these and several discrepancies in the accounting procedure, and the lack of documentation in support of the Attorney's claims for fees, it was concluded that it was difficult to reconcile the true amount of the outstanding balance due to the Attorney.
- [48] The report also noted that there were 103 payments made to the Attorney during the period under review; there were no supporting documents to validate the payments made; no proper recordkeeping, and no compliance with the Rules regarding the authorization of payments. It therefore followed that these payments to the Attorney had been made solely on the basis of the Attorney's request.
- [49] The report revealed that the Attorney had at one point secured a letter from the FSA to the Trinidad and Tobago Mortgage Finance Company which inaccurately stated that the Attorney was retained by the FSA on a monthly basis, when in fact she was paid in respect of each task undertaken on behalf of the FSA.

[50] The report noted that in the absence of supporting documentation such as invoices and receipts, and evidence of duplicate payments having been made, there was a possibility of fraud the submission of fictitious payment vouchers. It was also noted that no reconciliation had been prepared to ascertain the correct balance, if any, which was owed the Attorney; further, the Attorney never submitted a statement by way of justification of the fees that she claimed was due and owing to her or for the work that was undertaken and/or completed. Mr. Cunningham was of the view that these issues exposed the FSA to duplication of payments or overpayment; without a proper reconciliation exercise there was no clear basis for the FSA to settle any outstanding balance owed to the Attorney. Additionally, it was clear that a full investigation and report including the submission of proper documentation by the Attorney was required to bring about a resolution of the issues. The report had recommended that a proper reconciliation be prepared to enable the FSA to meet with the Attorney and confirm the receipt of payments and invoices for work done and thereafter be able to determine the outstanding balance.

[51] He recalled that a letter was sent to the Attorney by the FSA's Secretariat requesting documentation which would support her claim, but that documentation was never supplied by the Attorney.

[52] In October 2013, he attended a meeting of the Management Committee where a letter from Mrs. Antoine's Attorney was submitted and claimed that the association owed her nearly two million dollars. There was no proper explanation for this figure and in the light of the findings of the report, he was of the view that the FSA could not afford to make such a large payment without first determining the basis for it.

[53] On 12th November 2013, he attended another Management Committee Meeting where a letter of 11th November, 2013 from Ms. Roberts-Antoine's attorney was submitted and in which she advised that she would accept six

hundred thousand dollars (\$600,000.00) as full and final settlement of the Attorney's fees, upon receipt of her invoice. The letter also indicated that this offer was valid for seven days. No proper explanation for this settlement figure was proffered. The figure of six hundred thousand dollars appeared to be arbitrary since the attorney had previously proposed a figure of two hundred and sixty three thousand dollars (\$263,000.00) for outstanding fees. No reason was proffered in the increase in the sum owed, nor was any justification or supporting documents supplied.

[54] He felt the FSA had a duty to investigate further and determine what the true value of the outstanding claims was. At the meeting he supported a motion to retain a Mr. Kenneth Thompson, Attorney at Law to assist the FSA in dealing with getting to the bottom of Ms. Roberts Antoine's claims. Having regard to the PKF report, the Committee agreed that Mr. Thompson should be instructed to pursue negotiations to settle the Attorney's claim in the range of \$150,000.00 to \$250,000.00. This seemed to be a reasonable figure to him, because the last time he had been involved in negotiations with the Attorney, the figure claimed as legal fees had been around two hundred and sixty three thousand dollars (\$263,000.00).

[55] On 28<sup>th</sup> January 2014 he attended a meeting of the FSA's Finance Committee. A letter was received from Mr. Thompson indicating that the FSA's offer of settlement had been rejected, and that Ms. Roberts-Antoine was contemplating legal action, was tendered at the meeting. Even at this stage the Attorney did not supply to the FSA any supporting documents to verify the sum that was allegedly owed to the Attorney. The meeting agreed that at the next management meeting, a special committee including the President, General Secretary and Trustees, would be convened to instruct an attorney to work towards resolving the outstanding debt.

[56] In February 2014, he received a letter dated 19<sup>th</sup> February 2014 from the Acting General Secretary concerning the possibility of conflicts of interest



and breaches of trust by the President, in relation to legal proceedings involving her and the Attorney. He became aware that there were legal proceedings involving the Registrar General in which the Attorney was representing the President. Given this fact, it was alarming to find out that the President had not informed them that Ms. Roberts- Antoine was acting as her personal attorney at the same time that the President was chairing meetings where the payment of fees to her attorney was being discussed. He thought the prudent thing to do was to have this matter investigated by the Disciplinary Committee.

[57] On 22nd February 2014 he attended the FSA's Central Executive meeting to address the serious issues raised in the Acting General Secretary's letter. Since the President was absent, he called the meeting to order at 10.15a.m, but then made the decision to stand it down for thirty minutes due to lack of a quorum. When the meeting was re-convened at 10.45a.m, a motion to refer the first named defendant to the FSA's Disciplinary Committee was carried. A further motion to convene a special general meeting to treat with the issues raised in the letter was also carried.

[58] On 24th February 2014, he attended disciplinary tribunals in Savonetta Couva with the Acting General Secretary from 9am to around 3pm. The next day, 25th February, he attended a meeting of the FSA's Finance Committee at the FSA's headquarters. The President, Treasurer, and Trustees were absent. While at that meeting members raised concerns about a meeting the defendants had reportedly attended on the 24th of February, at which a decision had been made to pay the Attorney six hundred thousand dollars (\$600,000.00). He had not, prior to the meeting, received a notice, agenda, or phone call informing of the time and/or the date of the meeting on the 2th of February 2014. At the meeting of the Central Executive Committee on 22nd February 2014, there was no mention or notice given of any proposed or scheduled meetings for the 24th February 2014 or any subsequent date. He therefore had no

knowledge of whether a meeting took place on the 24th of February or on any day subsequent. Further to this, to the best of his knowledge the FSA's office was closed on 24th February 2014.

[59] Having regard to the seriousness of the concerns that had been raised at the Finance Committee meeting, a decision was made to call a special general meeting on 25th March 2014, to address the allegations of impropriety made against the President of the FSA with respect to the handling of the affairs of the FSA. A motion was moved and unanimously approved that the President recuse herself from acting as chair of the further meetings of the Executive, Management and Finance Committees until the investigation by the Disciplinary Committee was completed.

[60] On 11th March 2014, he attended another meeting of the Management Committee. While he was there at the meeting, there was a protest by several members of the FSA's membership, who were outside the FSA's Headquarters picketing and protesting in relation to the alleged payment of monies to the Attorney. He personally spoke to the protesting members and gave the assurance that he would make every effort to verify and identify the payment requests and the payments made to the Attorney after which he would return and report to the meeting.

[61] Ms. Quacco informed the members at the meeting that all the vouchers for January 2014 and the cheque books were taken away by Nigel George, the fourth named defendant, who at the time was one of the Trustees of the FSA.

[62] After hearing Ms. Quacco's report, a motion was moved, and the resolution was passed unanimously that Garvin Vincent and Morella George, who were the Treasurer and other Trustee of the FSA, be relieved of their duties. In accordance with the procedure of the FSA's Rules, a new Treasurer and two Trustees namely Fern Mitchell, Nigel Lampkin and Jevon Perch were co-opted and approved to act for a period of three

months. The whereabouts of the cheque books was not known and having regard to the circumstances regarding the unauthorized removal of the FSA's cheque books from the FSA's office, the Management Committee decided to lodge a report at the police station and to take steps as necessary to limit the exposure of the FSA and any financial transactions taking place without the approval of Management.

[63] On the 12th of March, he received a phone call from the Acting General Secretary. He informed him that there was an attempt to withdraw six hundred thousand dollars (\$600,000.00) from the FSA's fund at Guardian Asset Management. He also said that he had instructed Guardian Asset Management to halt all transactions concerning the FSA's fund. Based on what had been reported at the meeting on the 25th of February, he concluded that the Defendants were involved. As a result of this, and out of concern for the best interests of the FSA, he together with the members of the FSA's Management decided to retain an attorney at law to protect the FSA's interests.

[64] Over the 13th to 14th of March, 2014 he visited the office of Mr. Abdel Asraph, Attorney at Law, with the Acting General Secretary and Assistant Secretary (South) and gave instructions on behalf of the FSA to file an injunction against the defendants. On 17th March 2014 an ex parte injunction was granted restraining the Defendants, by themselves, their servants and/or agents or howsoever otherwise, from taking any steps or doing anything to give effect to the decision made by them to pay the Attorney the sum of \$600,000.00 (TTD) and in particular from breaking or in any way interfering with the investment fund of the Fire Services Association of Trinidad and Tobago (Second Division} held with the Guardian Asset Management Fund at #1 Guardian Drive, West Moorings.

[65] On 25th March 2014 he attended a meeting of the Finance Committee where the resignations of the First, Second, Fourth, and Fifth Defendants were tendered. The resignations were all dated 18th March 2014. The

members present at the meeting noted that the Second and Fifth Defendants had already been relieved of their duties on the 11th of March. The Committee decided to refer the Defendants to the FSA's Disciplinary Committee. On 4th April 2014, he attended an emergency Management Committee meeting at the FSA's headquarters. Management agreed that based on the membership's concerns, and the events that had taken place between February and March 2014, a forensic audit and gap analysis of the FSA's financial records was necessary. On the 8th April the audit was ratified by the Management Committee meeting.

[66] The firm Henry Tyson and Associates, Chartered Accountants, was contracted to conduct a review of the FSA 's internal administrative and financial management systems and investigate the whether there had been any misappropriation of the FSA 's assets. Between April and October 2014, the analysts reviewed the FSA's financial documentation, bank statements, minutes of meetings, and memoranda. A report was completed on 1st October 2014 and submitted to the FSA (the Report).

[67] The Report outlined that payments had been made to the Attorney which were not approved by the Finance committee, and that some of the payments to her were in conflict with documents and invoices submitted by her. There was a lack of clarity with respect to the accounting and requisitions for the funds disbursed by the FSA to the Attorney. There were several unauthorized withdrawals from the FSA's various bank accounts which appear to have been used to make payments to the Attorney and were detailed in the report as follows:

Date	Bank	Amount
17/03/2014	Republic Bank Limited - Ellerslie Park Branch	\$100,020.00
17/03/2014	Republic Bank Limited -- Woodbrook Branch	\$300,020.00
17/03/2014	First Citizens Bank Limited -- Edward Street	\$165,864.01
17/03/2014	First Citizens Bank Limited -- Edward Street	\$34,135.99

The total withdrawal was in the sum of six hundred thousand and forty dollars (\$600,040.00).

[68] The defendants disclosed, for the first time, a document which appeared to be a record of the minutes of the purported Management committee meeting held on the 24th February 2014 attended by the First, Second, Fourth and Fifth Defendants. The minutes appear to be recorded by the Fifth Defendant and signed by the First Defendant, but were neither dated nor authenticated by the Acting General Secretary, who is the Recording Officer charged with the duty of recording meetings of the Management Committee in accordance with the FSA's Rules. This document has never been submitted to a Management Committee meeting and has not been ratified.

[69] As a result of the unlawful withdrawals amounting to \$600,020.00 from the FSA's accounts by the Defendants, the FSA was unable to meet its recurrent expenditure and other debts. The FSA had perforce to secure a loan in order to meet the debts and expenses of the FSA.

### ***Cross Examination of Ashton Cunningham***

[70] Mr. Cunningham's evidence in cross-examination was consistent with his Evidence in Chief. In answer to Counsel, he asserted that while the President can call a Management committee meeting, the one called on 24th February 2014 was in breach of the FSA Rules.

## **EVIDENCE FOR THE DEFENDANTS**

### ***Gillian Lewis***

[71] Ms. Lewis testified that after the Committee engaged the Attorney about settling the debt owed her, there was disagreement among committee members about settling the said debt. The Claimants did not want to pay, while the Defendants, including herself did.<sup>7</sup>

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<sup>7</sup> Para 12 of the Witness Statement of Gillian Lewis filed on 21st November 2016

[72] Ms. Lewis also detailed the efforts to settle the claim, including the appointment of Mr. Thompson to negotiate with the Attorney on behalf of the FSA. She testified that the Claimant, of his own volition, instructed Mr. Thompson to offer a sum between one hundred and fifty thousand dollars (\$150,000.00) to two hundred and fifty thousand dollars (\$250,000.00); this was contrary to the committee's instructions to negotiate a reasonable settlement.<sup>8</sup> This Defendant testified that the First Claimant's disclosure that he had reported the Attorney to the Law Association was evidence of his 'bias' against settling the debt.

[73] The First Defendant asserted that the failure of Mr. Thompson to report to the committee on the progress of the negotiations, the Attorney's threat of litigation, as well as the intervention of 'other entities', caused her to call an emergency meeting to discuss the indebtedness of the FSA with respect to the Attorney. On the 17th February 2014, she therefore 'gave notice to the FSA's Secretariat headed by the Claimant'<sup>9</sup> of said emergency meeting carded for the 24th February 2014. On the 24th February 2014, the meeting was convened, the Claimants were absent without any excuse and the meeting proceeded as there was a quorum present.

### ***Cross Examination of Gillian Lewis***

[74] Ms. Lewis stated that on the 17th February 2014 she instructed a member of staff, the Secretary and the Third Defendant, to call a Management Committee meeting fixed for the 24th February 2014. Ms. Lewis admitted that she did not instruct the Third Defendant to prepare a Notice or Agenda in accordance with Rule 33 of the Rule book. She admitted that she did not satisfy herself that this Rule was complied with.

[75] She agreed that, pursuant to Rule 40, the General Secretary is empowered to manage the staff of the FSA; the President has no authority to direct/instruct staff including the Third defendant. Ms. Lewis however asserted that Rules 38 and 39 permit the President to issue directions to the staff. Ms. Lewis

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<sup>8</sup> Para 15 of the Witness Statement of Gillian Lewis

<sup>9</sup> Para 20 of the Witness Statement of Gillian Lewis

eventually acknowledged that the General Secretary is the only officer of the FSA who could issue direction to manage the staff including the Third Defendant, Ava Quacoo.

[76] Ms. Lewis admitted that she did not communicate with the General Secretary, the First Claimant, about the meeting before it was convened, nor did she discuss with him the Agenda for the said meeting. For the first time anywhere, this Defendant said that she attempted to contact Mr. Sennon before the meeting.

[77] Importantly, Ms. Lewis revealed that a Finance Committee meeting had been scheduled for the following day – the 25th February 2014 and that the Finance Committee meeting was the appropriate place to discuss the issue of the debt, especially since that committee comprised members of the Management Committee. Interestingly, Ms. Lewis revealed that she did not attend the Finance Committee meeting.

[78] The First Defendant confessed that from 2012, the Attorney had represented her in her personal capacity, defending her in disciplinary proceedings brought against her by the FSA, and other litigation. She revealed that the Attorney was still her personal lawyer at the time that she called the meeting on 24th February 2014. She called the meeting on 24th February 2014 and decided to pay said attorney fees in the sum of six hundred thousand dollars (\$600,000.00). She did not recuse herself from the decision but participated in it.

[79] Ms. Lewis also revealed that she was the President of the FSA when the Attorney threatened to sue the FSA and did in fact sue the FSA.

[80] The First Defendant testified that she told the Second Defendant about the date of the meeting, but not its location and did so verbally; no written instructions regarding this meeting was given by her. She claimed to be unaware that the First Claimant was conducting the FSA's business at Savonetta on the day that she fixed the meeting. Ms. Lewis revealed that she did not advise the General Secretary of the meeting's resolution to pay six hundred thousand dollars

(\$600,000.00) to the Attorney nor did she advise the Finance Committee of this fact despite the fact that she went to the FSA's office on 26th February 2014 to sign the vouchers for the payment to the Attorney. This Defendant later testified that she could not recall the date that she signed the vouchers.

[81] The First Defendant asserted that she called an emergency meeting on 24th February 2014, because of the negative publicity directed at the FSA and its possible decertification. She did not consider the Auditor's Report when considering the issue of payment to the Attorney.

[82] She accompanied the Trustees to the bank to withdraw sums to pay the attorney on the 17th March 2014; this was after an unsuccessful attempt was made to withdraw money from the Guardian Asset Management Fund held in the name of the FSA. Significantly, Ms. Lewis asserted that she could not say whether any money was left in the bank accounts of the FSA after the withdrawals.

### ***Garvin Vincent***

[83] Mr. Vincent testified that in 2013, he was co-opted to serve as Treasurer; his duties set out in Rule 43 of the FSA's Rule Book, included responsibility for the FSA's finances.

[84] He testified that at executive meetings of the FSA the First Claimant always voted against payment of the Attorney's fees or a resolution of her claim. He too claimed that the fact that Mr. Sennon had filed a complaint against the Attorney with the Disciplinary Committee of the Law Association was evidence of his bias against her.

[85] On the 23rd February 2014, Mr. Vincent stated that he received a telephone call from the FSA's Executive Secretary advising that the First Defendant had scheduled a special emergency meeting of the Management Committee for the 24th February 2014 to discuss the indebtedness of the FSA to the Attorney.



[86] Mr. Vincent testified that former members of the FSA, Mr. London and other persons (not named) ‘spoke on the issue of how the FSA had contributed to the accrued debt during their tenure in the late 1990s and 2000s<sup>10</sup>. It was also reported that the issue of this debt ‘was engaging the attention of several state agencies including the Judiciary, Ministry of National Security and the Director of Public Administration who had requested that the said Mr. London intervene in bringing a resolution.’<sup>11</sup>

[87] He advised the Committee that the FSA could not pay the Attorney the sum of two million dollars (\$2,000,000.00) plus interest which her attorney claimed the FSA owed her. After discussion, it was agreed among the committee members present to pay to the Attorney the last offer of settlement that she had made in the sum of six hundred thousand dollars (\$600,000.00).

### ***Cross Examination of Mr. Vincent***

[88] Mr. Vincent confessed that although he was aware that the Rules outlined the duties and responsibilities of the FSA’s Treasurer, he was not familiar with its contents. He revealed that he kept the accounts of the FSA as Treasurer and was responsible for payments of the debts and liabilities of the FSA. He explained that the Management Committee would meet and decide which debts were to be paid whereupon he would prepare the voucher and the trustee of the FSA would sign; he however denied that it was his responsibility to make payments by cheques. After reading Rule 43 of the Rules however, he admitted that he was responsible for making payments for the FSA’s debts. He stated that during his tenure as Treasurer, payments were made but not by him.

[89] Mr. Vincent also acknowledged that he prepared the voucher for the payment of six hundred thousand dollars (\$600,000.00) to the Attorney and left it in the office for the Trustee Mr. George. He asserted that the Trustees had custody of the FSA’s cheques.

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<sup>10</sup> Para 16 of the Witness Statement of Garvin Vincent filed on 21st November 2016

<sup>11</sup> Para 16 supra

- [90] In answer to Mrs. Griffith, Mr. Vincent revealed that the meeting on the 24th February 2014 was held at a venue other than the FSA since the FSA's offices were locked. He also stated that the sole purpose of the meeting was to decide upon paying the Attorney for legal work for the FSA 'over the years'.
- [91] Mr. Vincent acknowledged that while the debt to the Attorney was acknowledged by the FSA, the quantum had not been settled. Mr. Vincent stated for the first time that a statement of indebtedness had been provided. He asserted that at meetings on the issue of the debt, there had been no agreement to pay since some members objected to payment.
- [92] The Second Defendant testified that prior to the meeting of 24th February 2014, there had been no resolution to pay the Attorney a fixed sum of money. He also testified that he read the Auditor's Report commissioned by the FSA with respect to the legal fees paid to the Attorney for the period 1st January 2002 to 31st December 2009. PKF Limited, the auditors engaged by the FSA, outlined their concerns about the lack of invoices from the Attorney to support her claims for payment for work done. This Defendant admitted that no legal advice had been sought on the issue of the FSA's liability to pay the Attorney.
- [93] Mr. Vincent advised the meeting of the FSA's financial position – that it did not have enough funds to pay the sum claimed by the Attorney and the other outstanding debts of the FSA. He asserted that he did not advise the FSA to pay to the Attorney the sum of six hundred thousand dollars (\$600,000.00). This defendant later stated that at the time that the vote was taken to pay the Attorney, he did not advise the FSA that there was no money to pay the debt. He testified that as Treasurer, he made no objection to the vote being taken to pay the Attorney six hundred thousand dollars (\$600,000.00).
- [94] Mr. Vincent admitted that the attorney at law retained by the FSA to negotiate a settlement with the Attorney, never recommended payment of any sum to her. He also admitted that he was unaware of any settlement arrived at between the FSA and the Attorney. He revealed that he gave directions as to where the FSA's funds were located in order to pay out the sums to the Attorney. He was aware of the efforts made by the Trustees to pay the sum to the Attorney and saw the

balances in the FSA's accounts. He knew when he prepared the voucher that the money had to be withdrawn from several of the FSA's bank accounts. He claimed that while he was Treasurer he never saw the letters of 17th January 2012, 27th February 2013 or 17th June 2013.

[95] In answer to Mrs. Griffith for the Claimants, he stated that he agreed that the six hundred thousand dollars (\$600,000.00) should be paid to the Attorney while knowing that the FSA could not pay this and other debts at the same time.

### ***Ava Quacoo***

[96] Ms. Quacoo testified<sup>12</sup> that on the 24th February 2014 she was employed by the FSA as an Executive Secretary; as such, she was not a member of the Management Committee of the FSA, and played no part in its decision making. Ms. Quacoo asserted that she was an ex officio member of the Board and ought not to have been made a party to these proceedings.

[97] The Third Defendant asserted that any action taken by her was pursuant to instructions received by those who were her superiors at the material time.<sup>13</sup>

[98] Ms. Quacoo testified further that as part of her administrative functions, she would notify members of the Executive of the date of any executive meetings and ensure that all materials for such meetings were made available to them. Her duties did not include attending such meetings or recording the minutes of such meetings. Upon conclusion of any such meeting the notetaker would communicate certain action items on which her assistance would be required.

[99] On the 17th February 2014, she was instructed by the first named defendant, who was the President of the Association at the time, to inform the other

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<sup>12</sup> Witness Statement of Ava Quacoo filed on 31st January 2019

<sup>13</sup> Para 8 IV of the Witness Statement of Ava Quacoo

members of Executive that a special meeting of the Executive was being convened by the President, and to further inform of the date, time and place of such meeting. She accordingly complied with that request by contacting each member via telephone. The Claimants Mr. Cunningham, Mr. Noel, Mr. Lewis, Mr. Ramkisson, Mr. James and Mr. Wallace were advised of the said meeting as were the Defendants Gillian Lewis, Garvin Vincent, Nigel George and Morella George. Ms. Quacoo asserted that she spoke to Mr. Sennon in person since he was present at the FSA's offices.

[100] Ms. Quacoo stated that she was aware that the said meeting was convened on the 24th February 2014 at the Communication Workers Union Hall, situate at Henry Street, Port of Spain; Ms. Quacoo however, was at the material time standing outside the locked offices of the FSA with another employee until 1:00p.m, when they left the premises which had not been opened up to that time. She also noted that the First Defendant never arrived at that office to open its doors to allow her and another employee to enter. Ms. Quacoo denied attending the meeting or participating in the decisions taken at the said meeting.

[101] On the 25th February 2014, Ms. Quacoo stated that upon her arrival at the office, she was informed by the first named defendant of the decision of the Executive and given instructions to prepare a cheque in accordance with the decision of the Executive at the said meeting of 24th February 2014.

[102] Shortly thereafter, she was called into a meeting by the first named Claimant, who accused her of collaborating with the other Defendants, which she denied. Later that evening, she received a text message from the First Named Claimant, advising her not to report to work until further notice, and she was then terminated from her 14 years employment with the FSA.

[103] She subsequently initiated an action against the first named claimant in the Industrial Court, which is ongoing since 2014.

### ***Cross Examination of Ava Quacco***

- [104] Ms. Quacco was the FSA's Executive Secretary at the material time. She had access and control of the Association's vouchers and cheque books, and a lock and key for the office. In relation to the meeting of the 24th of February, she said that she was instructed by the First Defendant to inform the members of the executive that the First Defendant wanted to have a meeting concerning the payment of the Attorney's fees. She accordingly telephoned all the members of the Management Committee, but admitted that she did not prepare or circulate Notices or Agendas with respect to the said meeting.
- [105] The third Defendant testified that although she was aware that the meeting took place on the 24th February, she did not attend and never received or saw the minutes of the meeting before these proceedings. According to her, no approval was sought for the meeting, and the First Defendant did not give notice to the FSA Secretariat in writing.
- [106] She also accepted that she had not received instructions from the General Secretary with respect to the holding of this meeting in accordance with the Rules. In fact, the Third Defendant could provide no record of having communicated with any of the members concerning the meeting, and admitted she was relying on her memory and was unsure who she had contacted and when.
- [107] In relation to the payment of the six hundred thousand dollars (\$600,000.00) to the Attorney, Ms. Quacco said under cross examination that she had not prepared any cheques or vouchers for the disbursement of the funds but admitted that she had handed over the cheques and vouchers to the Fourth Defendant on his instructions around the end of February 2014 or beginning of March 2014, without the authorization of the General Secretary. This conflicted with her witness statement in which she said that she had been instructed by the First Defendant to prepare cheques and did in fact do so. She also admitted that she did not notify the General Secretary of the fact that the

cheques which were kept in her custody had been handed over to the Fourth Defendant.

[108] In answer to Counsel for the Claimant, the Third Defendant admitted that she prepared the cheques for the payment of monies to the Attorney without ever having seen the minutes of the Management Committee meeting authorizing such payment. This Defendant revealed that she was familiar with the rules and the practice which required that the Finance Committee approve any such payment to the Attorney. She also admitted that on the 25th of February 2014, she had prepared cheques for payment to the Attorney as instructed by the First Defendant and did not report this fact to the General Secretary, although she knew she was required to do so.

### ***Morella George***

[109] Ms. George testified<sup>14</sup> that soon after she was co-opted as a Trustee, she learned that the FSA had incurred a substantial debt for legal fees to the Attorney, and that there was a dispute with respect to the amount owed to the said Attorney. This information was disclosed to the Management Committee by Mr. Dave Sennon, the then Acting Secretary of the Management Committee.

[110] Ms. George asserted that during two Management Committee meetings, she was present when it was agreed by the members present to pay the said Attorney. To the best of her knowledge, this was recorded in the Management Committee minute book used for said meetings.

[111] The Fourth Defendant stated that in or around February 24th 2014, an emergency meeting was convened by the then President of the FSA, Ms. Gillian Lewis, in order to treat with the outstanding debt to the said Attorney since it had become a matter of urgency by this time. Due to an internal conflict among certain factions of the Management Committee, it was thought prudent to bring the Past President and former Secretary of the FSA, namely Mr. London and Mr.

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<sup>14</sup> Witness Statement of Morella George filed on May 4th 2018

Mc Intyre, to garner more information concerning this legal debt which had been incurred under their tenure.

[112] Ms. George stated that at the said emergency meeting the Acting General Secretary Mr. Dave Sennon, the Assistant Secretary Mr. Dexter Noel and Assistant Secretary for Piarco Kwasi Lewis were not present; she was then asked by the other members of the Management Committee to take the minutes of the meeting. Her prior experience as General Secretary of the Caribbean Association of Firefighters was considered suitable to take the minutes for this meeting.

[113] During the meeting Mr. London and Mr. Mc Intyre were asked questions by the First Defendant and other members of the Management Committee about the debt owed to the Attorney which had been incurred during their tenure. They left the meeting after they had 'satisfied' the Management Committee.<sup>15</sup>

[114] A vote was taken on paying the Attorney fees but this witness did not participate in the vote, simply recording the proceedings. The minutes were given to the President who passed them to Mr. George for safekeeping until he could gain access to the locked office of the FSA.

[115] She signed cheques totaling six hundred thousand dollars (\$600,000.00) in favour of the Attorney pursuant to the decision of the Management Committee which had been approved by the President.

[116] She later resigned from the FSA.

### ***Cross Examination of Morella George***

[117] Ms. George admitted that no resolution had ever been passed by the Management Committee with respect to the sum that was to be paid to the Attorney nor had there ever been an agreement to pay to her a specified sum in satisfaction of the debt. She acknowledged that the Committee had simply agreed to pay an unspecified sum to the Attorney.

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<sup>15</sup> Para 10 of the Witness Statement of Morella George

- [118] Ms. George was very vague about the number of Management Committee meetings that she had attended, or when she first began attending such meetings.
- [119] This Defendant revealed that the Third Defendant called her to advise of an emergency meeting to be held on the 24th February 2014 without informing her of the location of said meeting or the reason why it was being called. Astonishingly, Ms. George could not recall whether Ms. Quacoo informed her as to who had called this emergency meeting. Ms. George testified that she could not recall the last meeting that she attended before the 24th February 2014, but that she was aware that there was a Finance Committee meeting scheduled for the 25th February 2014.
- [120] This Trustee claimed to be unaware of the fact that the FSA was engaged in negotiations which were being held in Savonetta Couva and that Mr. Sennon and Mr. Cunningham were attending same on behalf of the FSA on the 17th February 2014 and 24th February 2014.
- [121] Ms. George asserted that she did not know when she had been notified by Ms. Quacoo about the meeting of the 24th February 2014, but she knew that this was not a statutory meeting as she did not receive a Notice or Agenda for this emergency meeting.
- [122] Her evidence was contradictory especially regarding the notes that she purportedly took at the meeting of the 24th February 2014. She confirmed that no documents were produced at the meeting apart from the letter dated 12th August 2013. She was equally vague about whether she saw/obtained/signed a voucher before attempting to withdraw FSA's funds from Guardian Asset Management. She revealed that she and the other Trustee signed a letter to present to Guardian Asset Management upon arrival at the Company. She also disclosed that Nigel George and herself prepared this letter for presentation to Guardian. The request was refused and she later signed three cheques totaling six hundred thousand dollars (\$600,000.00) drawn on the FSA's bank accounts. She later went to the bank with the other Defendants to withdraw this sum.



[123] Ms. George admitted that:

- i. she did not satisfy herself that the Rules were complied with relative to the meeting on 24th February 2014.
- ii. she knew that resolutions for payment of any debt were discussed at Finance Committee meetings and that a Finance Committee meeting was carded for the 25th February 2014.
- iii. the PKF report was referred to during the meeting, but a copy was not produced or tendered for consideration.
- iv. this was the first time that she had signed cheques drawn on the FSA's account.
- v. she could not say whether the FSA received any receipts from the Attorney after she had been paid.
- vi. she acknowledged that her evidence in chief that she had signed a cheque was inaccurate; she also failed to state there that Guardian Asset Management refused to pay out the funds. She also retreated from her evidence that she prepared a letter at the offices of Guardian requesting the six hundred thousand dollars (\$600,000.00) and asserted that it was the 25th February 2014.
- vii. the letter demanding the FSA's funds at Guardian Asset Management was prepared by Mr. George on the advice of a female person whom she could not name.
- viii. she could not recall when she signed cheques.
- ix. she could not remember obtaining temporary cheques leaves from Republic Bank Limited, Ellerslie Plaza and signing one of the cheques.
- x. she backdated the cheque so that it would carry the same date as that on the voucher for payment; she later said that she did not know why she had to backdate the cheque.

**Earl James**

[124] Mr. James gave a witness statement but did not attend the Court for Cross examination. As a result, I attributed no weight to his evidence.

**Lennox London**

[125] Mr. London testified<sup>16</sup> that he had been elected President of the FSA from 1998 to 2005. During his tenure, the FSA experienced ongoing financial difficulties; the Attorney was retained on condition that she would accept nominal payments until the FSA's finances improved when 'the balance of her fees' would be paid her<sup>17</sup>.

[126] He testified that he had been notified of the February meeting by telephone call from 'the current FSA Management Committee'<sup>18</sup>. He also stated that Notice of meetings would be by telephone only during his tenure as President.

[127] At the meeting, he was told by the First Defendant that the purpose of the meeting was to obtain further information about the debt owed to the Attorney. Mr. London asserted that he 'gave an overview of the debt' to the meeting without giving any details of this overview in his evidence in chief. He also revealed that Mr. James acted as note taker. Mr. Mc Intyre, also a former President of the FSA, also presented to the meeting. After their presentation, he left the meeting.

**Cross Examination of Mr. London**

[128] In answer to Counsel for the Claimants, Mr. London acknowledged that his knowledge of the operations of the FSA was limited to the period of his tenure – up to 2005. He revealed that prior to his retirement from the FSA he could not recall there being a resolution to pay a specific sum to the Attorney. He could not say what the FSA's indebtedness to the Attorney was up to the present time.

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<sup>16</sup> Witness Statement Of Lennox London filed on 4th May 2018

<sup>17</sup> Para 5 of the Witness Statement of Lennox London

<sup>18</sup> Para 7 of the Witness Statement of Lennox London filed on 4th May 2018

[129] His call from the Administrative Assistant to attend the February 2014 meeting was the first such call he had received from the FSA since his retirement in 2005. He claimed that he was unaware that a debt owed in 2005 was not payable in 2015. At the meeting, he spoke about the FSA's indebtedness to the Attorney up to 2005. He was not in receipt of the Auditor's Report at the meeting; when pressed, he could not say who the persons were who had allegedly expressed concern about the FSA's indebtedness to the Attorney, merely stating that he reported impending litigation against the FSA by persons who met him and said so. He denied stating that the Judiciary and Ministry of National Security expressed concern. He also denied telling the meeting that other government departments were taking action against the FSA. He denied any personal knowledge of the FSA's finances.

[130] He did not receive an Agenda for the meeting, nor did he see the minutes recorded. He did not hear the President address the meeting. Mr. London asserted that he was not aware of invoices forwarded by the Attorney with respect to litigation between himself and a third party, and could not recall if the Attorney acted on his personal behalf. He also claimed that as President, while he would see the invoices submitted, he could not recall any meeting or discussions on the subject of payment of fees to the Attorney for acting on his behalf or on behalf of the FSA.

***Michael Lloyd Mc Intyre***

[131] Mr. Mc Intyre was Vice President of the FSA from 1998 to 2005. Upon Mr. London's retirement as President in that year, he acted as President of the FSA from April 2005 to September 2005.

[132] He testified<sup>19</sup> that during his tenure the FSA faced several legal and financial challenges and the Attorney was retained to provide legal services to the FSA for which she would be paid "whatever nominal payments" could be made until the FSA's finances improved and she could be paid "the balance on her fees".<sup>20</sup>

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<sup>19</sup> Witness Statement of Michael mc Intyre filed on 4th May 2018

<sup>20</sup> Para 5 of the Witness Statement of Michael Mc Intyre

[133] He attended the meeting of 24th February 2014, after receiving a telephone call from “the current FSA Management Committee”.<sup>21</sup> Mr. London, Mr. James and himself were informed at the meeting by the First Defendant that information with respect to the debt owed the Attorney was required. He and Mr. London gave an overview of the debt while Mr. James served as notetaker. Upon concluding his presentation, he left the meeting.

***Cross-examination of Michael Lloyd Mc Intyre***

[134] He too admitted that this was the first time that he had attended an FSA meeting since his retirement in 2005; he had no knowledge about the finances of the organization or its day to day operations. His information about the affairs of the FSA was limited to the period prior to 2005. Mr. Mc Intyre testified that he was called to the meeting by the Secretary for the purpose of meeting with the President in order to confirm whether during his tenure on the Executive of the FSA the Attorney had been retained.

[135] This witness asserted that he told the meeting that the Attorney had been retained while the FSA was bankrupt and that she had agreed to assist until the FSA could pay her. He could not recall whether there had ever been a resolution as to the exact sum owed to the Attorney while he was an executive of the FSA. He could not say or recall what was the amount of the debt in 2005, nor did he have any documentation to support the existence of the debt. Mr. Mc Intyre testified that while he heard Mr. London’s address he could not recall him saying that government agencies were looking at the FSA or any threat of impending litigation.

[136] He could not recall what the First Defendant said to the meeting which he did not think was a ‘formal’ one. He asserted that it could not be a formal meeting since he was not a member of the FSA. He also revealed that it was a short meeting; after he confirmed that a debt existed, it came to an end.

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<sup>21</sup> Para 6 of the Witness Statement of M. Mc Intyre

## **THE LAW**

[137] In **Singh and Singh v Singh and Tai Chew**<sup>22</sup>, Narine J. (as he then was) stated the following in relation to fraud;

*“The burden of proving fraud lies on the person who alleges it. It must be distinctly alleged and distinctly proved. The standard of proof is on a balance of probabilities. However, the standard is flexible, and requires a degree of probability commensurate with the seriousness of the occasion. The more serious the allegation the more cogent is the evidence required to overcome the likelihood of what is alleged. The very gravity of an allegation of fraud is a circumstance which has to be weighed in the scale in deciding as to the balance of probabilities.”*

[138] The Law on fraud has since developed the distinction between “Actual” and “Constructive” Fraud.

In **Snell’s Principles of Equity (26<sup>th</sup> Ed)**<sup>23</sup> the authors opined:

*“In equity, the term “fraud” embraces not only actual fraud, in the sense just defined, but also certain other conduct which falls below the standards demanded by equity. Courts of equity did not even stop at “moral fraud in the ordinary sense” but took account of any “breach of the sort of obligation which is enforced by a court that from the beginning regarded itself as a court of conscience” (Nocton v Lord Ashburton [1914] A.C. 932 at 954 per Viscount Haldane L.C.) The Courts have refused to define this extended, or constructive fraud; for, in the words of Lord Hardwicke “Fraud is infinite, and were a Court of Equity once to lay down rules, how far would they go, and no farther, in extending their relief against it, or to define strictly the species of evidence of it, the jurisdiction would*

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<sup>22</sup> HCA 530 of 1991 at page 24 paragraph 2

<sup>23</sup> at Pg. 607

*be cramped, and perpetually eluded by new schemes which the fertility of man's invention would contrive.”*

[139] In **Mohammed v Mohammed**<sup>24</sup> the Court opined:

*..... when fraud is referred to in the wider sense in which the books are full of the expression, used in Chancery in describing cases which were within its exclusive jurisdiction, it is a mistake to suppose that an actual intention to cheat must always be proved. A man may misconceive the extent of the obligation which a Court of Equity imposes on him. His fault is that he has violated, however innocently because of his ignorance, an obligation which he must be taken by the Court to have known, and his conduct in that sense has always been called fraudulent, even in such a case as a technical fraud on a power. It was thus that the expression "constructive fraud" came into existence. The trustee who purchases the trust estate, the solicitor who makes a bargain with his client that cannot stand, have all for several centuries run the risk of the word fraudulent being applied to them. What it really means in this connection is, not moral fraud in the ordinary sense, but breach of the sort of obligation which is enforced by a court that from the beginning regarded itself as a court of conscience.*

[140] In **Abacus Trust Co (Isle of Man) and another v Barr and others**<sup>25</sup>, Lightman J described how a Trustee should exercise his duties:

*“16. The existence of the fiduciary duty on the part of trustees governing the exercise of their fiduciary powers requires trustees to inform themselves of the matters which are relevant to the decision (see *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705, 717), and in arriving at their decisions whether and how to exercise their discretionary powers to take into*

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<sup>24</sup> CV 2006-00045 at paragraph 40

<sup>25</sup> [2003] EWHC 114

*account all relevant but no irrelevant factors: see Edge v Pensions Ombudsman [2000] Ch 602, 627-628. The fiduciary duty requires trustees to follow a correct procedure in the decision-making process: see Etherton J in Hearn v Younger [2002] EWHC 963 (Ch) at [91] citing Staughton LJ in Stannard v Fisons Pension Trust Ltd [1991] PLR 225, 237, para 65. This duty lies at the heart of the rule, which is directed at ensuring for the protection of the beneficiaries under the trust that they are not prejudiced by any breach of such duty.”*

[141] After careful analysis of the evidence, I found the following facts:

- i. there was no evidence by way of invoices or reconciliation of the amount due to the Attorney as at the 24th February 2014;
- ii. at the time that the Defendants held the purported meeting on 25th February 2014 to decide on paying the Attorney, the latter was acting for the First Defendant and Mr. London in their personal capacity. Both Ms. Lewis and Mr. London were aware that their personal relationship with the Attorney amounted to a clear conflict of interest having regard to the fact that this attorney also represented the FSA and there was an ongoing dispute between the FSA and the Attorney with respect to the payment of her fees. Their action in aggressively seeking to have her paid without notifying the Claimants and other executive members of the FSA was both suspicious and questionable;
- iii. no documentation to support the existence or size of the alleged debt was ever produced by the Attorney or any of the Defendants to justify the payment of six hundred thousand dollars (\$600,000.00) to her ;
- iv. the General Secretary, the First Claimant had not been notified of the meeting of the 25th February 2014 or of the decision taken neither had

the Vice President, the Second Claimant been so notified in breach of the Rules<sup>26</sup> of the FSA;

- v. the Defendants attempted to withdraw a substantial sum from the FSA's investment at Guardian Life without communicating with the First Claimant, the General Secretary and the FSA's Accounting Officer in breach of Rule 57<sup>27</sup> of the Rules;
- vi. the Fourth and Fifth Defendants acted in breach of their fiduciary duty to the FSA by causing cheque payments to be made to the Attorney without the signed authorization of the General Secretary;
- vii. the Fourth and Fifth Defendants acted in breach of their fiduciary duty by causing payments to be made to the Attorney in the absence of a resolution of the Finance Committee and in the absence of authenticated payment vouchers;
- viii. on the 24th February 2014, the First, Second, Fourth and Fifth Defendants were all aware that there had been no Finance Committee resolution and/or approval for the disbursement of any sum to the Attorney and that the General Secretary was unaware of the proposed payment to the said Attorney;
- ix. in light of the ongoing dispute between the FSA and the Attorney as to the quantum of fees owed to her, as well as the audited report which revealed that payments had been made to the Attorney in the absence of invoices or requisitions, that double payments had been made to her for the same items and the knowledge of the Defendants of these facts their payment to the Attorney in these circumstances was fraudulent and amounted to a breach of their fiduciary duty to the FSA;

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<sup>26</sup> **Rule 33:** Notice of the Convention of Management Committee meetings, together with a copy of the agenda, must be served on each Committee member at least four days prior to the meeting.

<sup>27</sup> "an order for the transfer of funds from the Association's banking accounts must be signed by any two (2) trustees and accompanied by a letter signed jointly by the President and Secretary General containing a supporting resolution of the Finance Committee.... And that all trustees must ensure that all cheques for endorsement are completed and accompanied by duly authenticated statements of Claim and Payment Vouchers."



- x. the Defendants' failure to advise the First and Second Claimants of the meeting on the 24th February 2014 was deliberate, given their intention to make a payment to the Attorney and their knowledge that Mr. Sennon and Mr. Cunningham would not have agreed to that payment in the absence of justification for same and a resolution from the Finance Committee authorizing such payment;
- xi. the failure to issue a written notice and agenda for the meeting of the 24th February 2014 was deliberate in order to ensure that the Defendants' decision to pay the Attorney and the payment to the Attorney could be effected without notice to the Claimants. The Defendants' alleged resolution to pay the Attorney was not communicated to other members of the Executive, including the Claimants;
- xii. the Defendants knew that the payment of such a large sum to the Attorney would create financial difficulty for the FSA;
- xiii. after achieving their goal of paying the Attorney in the absence of any justification for that payment they all resigned on the said day;
- xiv. the cheques issued to pay the Attorney were all backdated to the 2th February notwithstanding the fact that the actual withdrawals were made in March.

[142] I found the evidence of all of the Defendants to be lacking in credit and unreliable. They knew that their actions on the 24th February and the 17th March were dishonest, deliberate, in breach of the Rules and in breach of their fiduciary duty to the FSA. I hold further that they all knew that there was a clear conflict of interest in Ms. Lewis and Mr. London advocating the payment to the Attorney when the Attorney was representing Ms. Lewis in an action brought against her by the FSA.

[143] I therefore hold that:

- a. the actions of the First, Second, Fourth and Fifth Defendants in holding the meeting of the 24th February and in paying the sum of six hundred

thousand dollars (\$600,000.00) to the Attorney were fraudulent and were effected with the intention of fraudulently depriving the FSA, to whom they owed a fiduciary duty, the sum of six hundred thousand and forty dollars (\$600,040.00).

- b. The fraudulent actions above amounted to a breach of the fiduciary duty owed by the First, Second, Fourth and Fifth Defendants to the FSA.

[144] I am of the view that the Third Defendant did not inform the Claimants or the other members of the Executive of the meeting of the 24th February 2014. She also knew that that meeting was being held in breach of the Rules of the FSA, and to that extent she assisted the other defendants in carrying out their unlawful and fraudulent acts on the 24th February and 17th March. However, she was not a member of the Management Committee of the FSA and therefore did not participate in the decision to pay the Attorney neither did she attend to take notes of the meeting of the 24th February 2014. In the circumstances, I hold that she is not liable for the fraudulent conduct perpetrated by the other Defendants. Having found however, that she was aware of the activities of the other Defendants and deliberately failed to notify the Claimants and other executives of the meeting of the 24th February, I exercise my discretion not to award her any costs even though the claim is dismissed against her.

[145] In the circumstances I grant the following:

- a. A Declaration that the purported Management Committee meeting of the FSA held at the Communication Workers Union Hall, 146 Henry Street, Port of Spain on the 24th February 2014 was contrary to the constitution and/or Rules of the FSA and consequently was null, void and of no effect.
- b. A Declaration that the decision taken at the said meeting to pay Juliet Robert-Antoine, Attorney at Law, the sum of six hundred thousand (\$600,000.00)dollars is null, void and of no effect and does not in any way bind the FSA and/or its members.

- c. A Declaration that the decision by the Defendants on the 24th February 2014 to pay the Attorney six hundred thousand and forty dollars (\$600,040.00) and the payment of this sum to the said Attorney were fraudulent acts perpetrated by the Defendants in breach of their fiduciary duty owed to the FSA.
- d. A Declaration that the decision of the 24th February 2014 to pay to the Attorney the sum of six hundred thousand and forty dollars (\$600,040.00) and the subsequent payment to her of this sum were effected by the Defendants with the intent to defraud the FSA of the sum of six hundred thousand and forty dollars (\$600,040.00).

I also Order:

- a. Judgment for the Claimants against the First, Second, Fourth and Fifth Defendants;
- b. The Claimants' case against the Third Defendant is dismissed;
- c. The Defendants' counterclaim is dismissed;
- d. The Defendants to pay to the Claimant the cost of the counterclaim to be assessed by the Registrar in default of agreement;
- e. The First, Second, Fourth and Fifth Defendants do repay the sum of six hundred thousand and forty dollars (\$600,040.00) to the FSA for fraudulently depriving the FSA of this sum in breach of their fiduciary duty;
- f. The First, Second, Fourth and Fifth Defendants pay to the Claimants prescribed costs in the sum of seventy nine thousand dollars (\$79,000.00).

**Joan Charles**  
**Judge**