

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2005-00353**

**BETWEEN**

**TRINIDAD AGRO SUPPLIES SERVICES LIMITED**

**Claimant**

**AND**

**CARONI (1975) LIMITED**

**First Defendant**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Second Defendant**

**WAYNE INNISS**

**Third Defendant**

**WILLIAM WASHINGTON**

**Fourth Defendant**

**JUDGMENT**

**Before the Hon. Mr. Justice André des Vignes**

**Appearances:**

**Mr. P. Deonarine instructed by Ms. S. Moolchan for the Claimant**

**Mr. R. Martineau S.C. and Mr. N. Bisnath instructed by Mr. Ramoutar for the**

**First Defendant**

**Mr. E. Prescott S.C., Mr. P. Lamont and Mr. N. Byam, instructed by Ms. S. Dass for the  
Second Defendant**

**Mr. W. Inniss in person.**

## **Undisputed Facts**

1. The First Defendant was wholly owned by the Government of Trinidad and Tobago and its Board of Directors was appointed by the Government. As a result of Government's plan to restructure the sugar industry, the First Defendant ceased operations as an operating company as at 31<sup>st</sup> July, 2003, with the exception of a Transition Team which was appointed to fulfill outstanding obligations and to wind down and complete administrative and other matters. The First Defendant had offered a Voluntary Separation Employment Package (VSEP) to its workers and with the implementation of this package, the First Defendant ceased cultivation and processing of sugar cane.
2. In order to facilitate the restructuring process, the Government set up two wholly owned state enterprises, namely the Sugar Manufacturing Company Limited (SMCL) and the Estate Management and Business Development Company Limited (EMBDL). The SMCL was responsible for sugar processing and refining previously conducted by the First Defendant and the EMBDL was responsible for the development and management of the real estate holdings of the First Defendant.
3. Prior to restructuring, the First Defendant had cultivated approximately 35,000 of sugar cane which was left uncultivated when the First Defendant ceased operations. After restructuring, SMCL was given a target by the Government to produce 75,000 tonnes of sugar annually at the Usine St. Madeleine factory. When SMCL was formed in 2003, representations were made that, in order to meet the target set by the Government, SMCL needed more sugar canes than the private farmers could supply and that some of the sugar canes on the First Defendant's lands could be cultivated, harvested and supplied to SMCL by harvesting contractors. As a result, it was agreed that 12,000 acres of the First Defendant's lands would be made available to harvesting contractors for maintenance, cultivation and harvesting for crop 2004.
4. On 17<sup>th</sup> September 2003, the Claimant submitted a proposal to SMCL for the maintenance of approximately 2,500 acres of existing sugar cane fields for harvesting in crop 2004.
5. On the 29<sup>th</sup> September 2003, SMCL accepted the Claimant's offer to enter into a contract for the identification, maintenance and harvesting of canes standing on approximately 2,500 acres of land of the First Defendant's lands. Thereafter, the Claimant cultivated and harvested cane on the First Defendant's lands for crop 2004 with equipment provided by the First Defendant.

6. On or about January 2004, the Government, through the Ministry of Agriculture, Land and Marine Resources (hereinafter referred to as "the Ministry"), appointed a Sugar Industry Team ("the SIT") which was responsible, inter alia, for ensuring an adequate supply of cane to SMCL to enable it to achieve its annual production target.
7. The Third Defendant was the Agricultural Manager Sugarcane of the First Defendant up to on or about 3<sup>rd</sup> August 2003 when he accepted the VSEP offer of the First Defendant. Thereafter, he was a member of the Transition Team until the end of December 2003 and then he became the Chief Operations Officer of the SIT from January 2004.
8. On or about 3<sup>rd</sup> June 2004, the Claimant was informed by SIT that its request to be considered as a harvesting contractor for crop 2005 was approved and the Claimant was instructed to contact the Fourth Defendant, the Manager Sugarcane Supply of the SIT to arrange the identification and selection of fields to be allocated to the Claimant for cultivation and harvesting. The Claimant was also notified it will be required to enter into a formal agreement with the First Defendant in respect of the temporary occupation of its lands and a further agreement with SMCL in respect of the supply of sugarcanes to the Factory.
9. The Claimant did not enter into any formal agreements with the First Defendant or SMCL as required but it continued to maintain, cultivate and harvest sugar canes on the First Defendant's lands, without objection from the First Defendant, up to the end of crop 2005 in or about June 2005.
10. On or about 1<sup>st</sup> September 2005, the First Defendant requested the Claimant to return all of the First Defendant's equipment in its possession within two weeks. The Claimant did not comply with this request.
11. On or about 21<sup>st</sup> October 2005, the First Defendant called upon the Claimant to return its equipment immediately and to vacate the lands it previously maintained and reaped within fourteen days.
12. After an exchange of correspondence between Attorneys for the Claimant and for the First Defendant in late October 2005, the Claimant instituted these proceedings against the First Defendant in early November 2005 seeking, inter alia, injunctive relief to permit the Claimant to continue to harvest the sugar cane crop for crop 2005/2006.

### **Summary of proceedings**

13. The Claimant's claim is for, inter alia, damages for trespass to 1985.6 acres of land occupied by the Claimant on lands of the First Defendant which were destroyed by the First Defendant between August and September 2005 and for monies expended on rehabilitating the land and purchasing equipment. Alternatively, the Claimant claims damages for breach of contract, a declaration that it had an interest coupled with an equity in the said lands and a declaration that the First Defendant is estopped from requiring the Claimant to deliver up possession of the said lands and/or its equipment.
14. The claim was initially brought against the First Named Defendant only on the 2<sup>nd</sup> November 2005 but, in its Defence filed on 1<sup>st</sup> March 2006, the First Defendant contended that the Government agreed that 12,000 acres of the First Defendant's lands would be made available to harvesting contractors for harvesting on a temporary basis. As a consequence, the Claimant amended its Claim and Statement of Case on 20<sup>th</sup> June 2006 to add the Attorney General of Trinidad and Tobago as a Defendant, pursuant to section 3 of the State Liabilities and Proceedings Act Chap. 8:02. However, in the Defence of the Second Defendant filed on 7<sup>th</sup> December 2006, it was denied, inter alia, that Mr. Wayne Inniss and Mr. William Washington had any authority to grant permission to the Claimant on behalf of the Ministry to utilize the First Defendant's land. As a further consequence, the Claimant re-amended its Claim Form and Statement of Case to join Mr. Inniss and Mr. Washington as the Third and Fourth Defendants respectively. A joint Defence was filed on their behalf on 13<sup>th</sup> October 2008. Unfortunately, the Fourth Defendant passed away before trial and the Claimant discontinued the action against him.

### **The Claimant's case**

15. The Claimant, which is in the business of supplying agricultural supplies and services, alleges that in early September 2003, its directors, Praitnath Sawh and Ralph Sawh attended a meeting at the offices of SMCL which was attended by Prem Nandlal, the Chairman of SMCL, Clarence Rambharat, the Corporate Secretary of SMCL and of the First Defendant and the Third Defendant, a member of the Transition Team. The purpose of this meeting was to discuss the possibility of the First Defendant becoming a harvesting contractor which would provide the SMCL with a supply of cane to enable it to meet its production target. The Claimant alleges that

at this meeting, the Third Defendant, in response to a question raised by Mr. Praimnath Ramnath as to the duration of its contract, responded that "*arrangements would be put in place for a long term contract for cultivation for a period of four (4) to five (5) years.*"

16. By letter dated 17<sup>th</sup> September 2003, the Claimant submitted a proposal to SMCL for the maintenance of 2500 acres of existing sugar cane fields for harvesting in crop 2004. By letter dated September 29<sup>th</sup> 2003, SMCL accepted the Claimant's offer. Modifications to the terms and conditions of the contract were subsequently made. One of the major modifications concerned the terms for the renting and leasing of equipment by the First Defendant to the Claimant to assist in the cultivation of sugar cane. On receipt of the equipment, the Claimant observed that the equipment was in an advanced state of disrepair and parts were cannibalized. In order to render the equipment operational, the Claimant was required to expend considerable sums of money. As a consequence, the Claimant decided not to pay for the rental or lease of the equipment and the First Defendant impliedly agreed to this by not requesting any remuneration for rental or lease of the equipment.
17. Initially the Claimant cultivated, maintained and harvested 2500 acres but from 2004 onwards, the Claimant's acreage was reduced to 1985.6 comprising:
  - 917 acres at "Exchange Section"
  - 517.7 acres at "Waterloo Section"
  - 354.1 acres at "Montserrat Section"
  - 100.4 acres at "Esperanza Section"
  - 96.4 acres at "Reform Section"
18. In order to rehabilitate and cultivate the land, the Claimant was required to carry out extensive works. Further, the Claimant expended approximately \$750,000.00 to make the equipment operational, which was financed through loans from the Agricultural Development Bank and First Citizens Bank Limited. In addition, the Claimant purchased four harvesters worth in excess of \$600,000.00 to be used in harvesting sugar cane for crop 2006 and beyond.
19. The Claimant alleges that during the harvest of 2004, he requested of the Third Defendant a formal document confirming the agreement made in September 2003 that the contract would be a period of four to five years.

20. By letter dated 3<sup>rd</sup> June 2004 from SIT to the Claimant, the Claimant was notified that its request had been approved to be a harvesting contractor for the cultivation and harvesting of cane for supply to SMCL in crop 2005.
21. Further, by letter dated 29<sup>th</sup> November 2004 from the SIT addressed "To whom it may concern", the Fourth Defendant advised that the Claimant had been contracted to cultivate and harvest approximately 2,000 acres of sugar cane fields owned by the First Defendant for supply to SMCL in crop 2005. The letter also stated that "*this contract would extend for the next three years*" and ended by stating that "*any assistance given to (the Claimant) would be greatly appreciated.*"
22. The Claimant alleges that in reliance on this extension of contract, it ordered an additional harvester.
23. However, by letter dated 3<sup>rd</sup> February 2005, the Claimant was advised by the Fourth Defendant, on behalf of the SIT, to refrain from undertaking any future crop operations after the fields have been harvested in crop 2005 because former workers of the First Defendant had been promised two acres of land each, the exact location of which had not yet been identified.
24. Thereafter, Mr. Praimnath Sawh, on behalf of the Claimant held meetings with the Third Defendant concerning the Claimant's preparations for the 2006 crop and indicated to him the quantity of money invested by the Claimant.
25. By letter dated 28<sup>th</sup> February 2005, the Claimant wrote to the Financial Comptroller of the First Defendant requesting the purchase of herbicide and this request was approved by officials of the First Defendant, including the First Defendant's CEO.
26. At a meeting held in April 2005, the Third Defendant advised the Claimant to continue preparations for the 2006 crop and informed the Claimant that "*the sugar industry is here to stay, it is like steel pan*".
27. In early August 2005, the Claimant observed that the First Defendant was surveying and brush cutting certain fields and on 17<sup>th</sup> September 2005, the Claimant bulldozed fields cultivated by the Claimant. Upon enquiry of the Third Defendant as to the reason for the destruction, Mr. Praimnath Sawh was informed that the issue would be discussed at a ministerial level.

28. However, by letter from the First Defendant dated 1<sup>st</sup> September 2005, the Claimant was requested to return all equipment which were loaned to it to assist in 2004 and 2005 crops within two (2) weeks of receipt thereof.
29. By letter dated 23<sup>rd</sup> September 2005, the Claimant made a claim against the First Defendant for damages suffered as a result of the alleged trespass by the First Defendant on the lands cultivated by the Claimant.
30. By letter dated 21<sup>st</sup> October 2005, received by the Claimant on the 22<sup>nd</sup> of October 2005, the First Defendant again requested the Claimant to return all equipment immediately and to vacate the lands occupied by the Claimant within 14 days of receipt of same.
31. The Claimant alleges that the First Defendant trespassed upon 926.7 acres of the lands occupied by the Claimant.

**Reliefs sought by the Claimant**

32. The Claimant claims against the First Defendant the following reliefs:
  - (i) Damages for trespass to 926.70 acres of land occupied by the Claimant in Brechin Castle.  
The said lands comprise the following:
    - 448.40 acres at “Exchange Section”
    - 413.70 acres at “Waterloo Section”
    - 64.60 acres at “Montserrat Section”
  - (ii) Further and/or alternatively, damages for breach of contract evidenced orally and in writing by an exchange of documents between the First and/or the Second and/or the Third and/or the Fourth Defendants;
  - (iii) Further and/or alternatively, a declaration that the Claimant has an interest coupled with an equity in lands comprising 1985.6 acres;
  - (iv) Further and/or alternatively, a declaration that the First Defendant is estopped from requiring the Claimant to deliver up possession of the said lands and/or from returning equipment in terms of the notice of termination dated 21<sup>st</sup> October 2005 from the First Defendant or at all;
  - (v) Further and/or alternatively, a declaration that the Claimant is entitled in equity to cultivate and harvest the lands with the equipment supplied by the First Defendant for a period of three years from 29<sup>th</sup> November 2004;

- (vi) Further and/or alternatively, a declaration that the conduct of the First Defendant by its servants and/or agents in issuing a termination notice demanding the return of equipment within fourteen days was unconscionable and/or inequitable and/or unjust;
  - (vii) An injunction to restrain the First Defendant its servants and/or agents from trespassing on the said lands and/or entering onto and/or ejecting the Claimant from the said lands and/or interfering in any way whatsoever and/or howsoever with the Claimant's occupation of the said lands;
  - (viii) Further or alternatively, exemplary damages;
  - (ix) Interest;
  - (x) Costs.
33. The Claimant also seeks by way of alternative relief against the Second and/or the Third and/or the Fourth Defendants damages for breach of warranty, interest and costs.

#### **The First Defendant's Defence**

34. The First Defendant alleges that the Government through the Ministry created the SIT, to ensure that SMCL had an adequate supply of cane for it to achieve its annual production target. The Government agreed that 12,000 acres of the First Defendant's land would be made available to harvesting contractors for harvesting on a temporary basis. The lands were allocated to thirteen contractors for the crop years 2004 and 2005 to supply sugar cane to SMCL. The SIT was given the responsibility of approving and selecting the contractors and allocating the areas for the purposes of harvesting. The allocations were for the crop year 2004 and 2005 only since the First Defendant was obliged to allocate parcels of lands to its ex-employees and the location of these parcels of lands had to be determined and identified and would have been on parts of the lands allocated to the harvesting contractors.
35. The First Defendant denies that it dealt with any of the harvesting contractors in relation to any contract and states that SMCL and the SIT were the entities that dealt with the contractors.
36. The First Defendant states that the Third Defendant was a former employee of the First Defendant who accepted VSEP in August 2003 and he was paid by the First Defendant as a member of the Transition Team until December 2003. He subsequently became the Chief



Operations Officer of the SIT. As such, neither the Third Defendant nor Mr. Rambharat represented the First Defendant or had any authority to represent them at meetings.

37. The First Defendant admits the correspondence between the Claimant and SMCL in September 2003 and avers that it was not a party to the negotiations.
38. The First Defendant alleges that the offer made by the Claimant to the SMCL was to maintain and harvest 2,500 acres for the crop 2004 and that the crop for any year ends by June of that year. As such, the acceptance by SMCL of the Claimant's proposal was for the 2004 crop.
39. The First Defendant denies the allegations made by the Claimant with respect to changes to the contract concerning the renting and leasing of equipment. Instead, it alleges that the First Defendant was requested to make available to the harvesting contractors the equipment they needed to assist them in harvesting the canes and the Claimant was allowed to examine the entire stock of equipment and to select such equipment as they needed on condition that it would be returned to the First Defendant when requested. The First Defendant denies, however, that the equipment was in a state of disrepair.
40. The First Defendant denies ever transporting cane to SMCL on behalf of any contractor but admits selling fertilizer to the Claimant on credit.
41. The First Defendant admits ownership of the lands occupied by the Claimant and that it was aware that the Claimant was given permission by the Government to enter upon a portion of its lands for the crop year 2004 and 2005 for the purpose of harvesting sugar canes to supply same to SMCL. However, the First Defendant alleges that at no time did it give possession of its lands to the Claimant nor did anyone do so on its behalf and no one was authorised by the First Defendant to do so.
42. The First Defendant does not admit the extensive works undertaken by the Claimant on the land in order to rehabilitate the land or the amount that was allegedly loaned to the Claimant to make the equipment operational and to purchase new harvesters.
43. The First Defendant states that it is a stranger to the letter written to the Claimant by the Fourth Defendant and denies that the Fourth Defendant was acting on its behalf or as its representative at the material time. Further, the letter was an accommodation letter given by the Fourth Defendant to the Claimant on behalf of the SIT so that the Claimant could obtain financial

assistance and it was limited to that purpose only and did not have the effect of extending any contract as alleged or at all.

44. The First Defendant also states that at the material time the Third Defendant was not employed with nor was he the servant or agent of the First Defendant and was not authorised to act on its behalf.
45. The First Defendant also states that the Claimant's permission to harvest its canes on the First Defendant's lands expired at the end of crop 2005, that is, around June 2005 and thereafter the Claimant had no right to do any further harvesting thereon and possession of the said lands continued to be vested in the First Defendant solely.
46. The First Defendant admits that it commenced work in certain areas of its lands where the Claimant had previously been allowed to harvest canes, which said permission expired at the end of crop 2005.
47. The First Defendant also admits the letter dated 1<sup>st</sup> September 2005 to the Claimant and states that the Claimant failed and/or refused to return the said equipment.
48. The First Defendant denies that it has committed any acts of trespass against the Claimant and states that the Claimant's sole right in relation to the said lands was related to harvesting the cane crop thereon for the crops 2004 and 2005, which expired around June 2005 and that possession was vested in the First Defendant, the owner of the said lands.
49. The First Defendant denies that the Claimant has suffered loss and damage as alleged.

### **The Second Defendant's Defence**

50. The Second Defendant denies that any contract was entered into between the Claimant and the Ministry. He also asserts that the Ministry is not the servant or agent of the First Defendant and as such, no cause of action is sustainable against the Second Defendant in this regard.
51. The Second Defendant also denies that the Third Defendant was ever the Chief Operations Officer of the Ministry. Instead, the Third Defendant was the Chief Operations Officer of the SIT, which was formed in 2004 to ensure that an adequate supply of sugarcane was provided to the SMCL. Further, the Second Defendant denies that the SIT was a legal person or that the members of the SIT acted as servants or agents of the Second Defendant or that they had authority to bind the State, whether by way of contract or otherwise. They contend that the SIT

was purely advisory and was responsible for arranging for contractors to go onto the First Defendant's land to harvest sugarcane for the SMCL.

52. The Second Defendant admits that a meeting took place in September 2003 as alleged by the Claimant but says that it was a meeting between the Transition Team and the Claimant's representatives. The Transition Team concluded its work in 2003, after the companies had been set up. The Third Defendant was a member of the Transition Team but he had no authority to bind the Second Defendant and he was not an employee of the Second Defendant. In addition, the Second Defendant denies that the Third Defendant indicated to the Claimant that arrangements would be put in place for a long term contract for 4 - 5 years.
53. The Second Defendant says that it is a stranger to the alleged offer and acceptance made by the Claimant to SMCL to harvest 2,500 acres of sugar cane for the 2004 crop and the rental of equipment belonging to the First Defendant. They also say that they are strangers to the modifications to the said contract alleged by the Claimant as well as to the sums expended by the Claimant to cultivate the land.
54. With regards to the letter dated 3<sup>rd</sup> June 2004 from the SIT to the Claimant, the Second Defendant contends that that letter related to the crop year 2005 and denies that it is bound by any contract for four to five years.
55. With respect to the letter dated 29<sup>th</sup> November 2004 from the SIT, the Second Defendant avers that that letter does not amount to an extension of the contract capable of binding the Second Defendant. This letter was written by Mr Williams Washington for the purpose of accommodating the Claimant's request for the letter but it was not intended to have any binding effect nor could it serve to restrict the power of the State to modify its policies. In any event, the Second Defendant alleges that Mr Washington had no authority to bind the Ministry.
56. The Second Defendant also denies the allegations made by the Claimant regarding the Third Defendant's assurance to the Claimant in April 2005 that preparations for the 2006 crop could proceed. The Second Defendant contends that the Third Defendant had no authority to act on behalf of the Ministry in this regard and, as such, his assurances were incapable of binding the State or limiting its prerogative to change its policy.

57. Insofar as the Claimant alleges that it made investments in fertilisers and herbicides in reliance upon the representations of Mr. Washington and Mr. Inniss, the Second Defendant denies that they had any authority to make contracts binding the Ministry.
58. The Second Defendant denies that the Claimant suffered damages as alleged in the Re-Amended Statement of Case. Further, the Second Defendant makes no admission as to the incidents complained of and the request of the First Defendant for the return of the equipment and correspondence sent by the Claimant subsequent to the destruction of the fields cultivated by the Claimant.

### **The Third Defendant's Defence**

59. The Third Defendant alleges that he was an employee of the First Defendant until he accepted VSEP in or about 3<sup>rd</sup> August 2003. Thereafter he worked with the First Defendant on a month to month contract until 31<sup>st</sup> December 2003 as part of the Transition Team until he assumed the position of Chief Executive Officer of the SIT around 1<sup>st</sup> January 2004. He alleges that the SIT was a sub-group of the Ministry and was answerable to the Minister of Agriculture.
60. The Third Defendant contends that neither he nor Mr. Washington negotiated or contracted with the Claimant in their personal capacities. He also denies that either of them held themselves out to be agents of the First Defendant at any time after 31<sup>st</sup> December 2003. Instead, all dealings with the Claimant with regards to the sugarcane lands were done by the Third Defendant in his capacity as a member of the Transition Team, appointed by the First Defendant, between August 2003 and 31<sup>st</sup> December 2003 and thereafter as a member of the SIT, with full authority of the SIT and the Ministry.
61. The Third Defendant asserts that the Transition Team was established by the First Defendant to determine and resolve issues concerning the supply of farmers' sugarcane to SMCL and to secure for SMCL a supply of 900,000 tonnes of sugar cane to meet the annual production target of 75,000 tonnes of sugar.
62. The Third Defendant alleges that the Transition Team was requested by the Ministry to encourage independent contractors to make proposals to SMCL for the cultivation of sugar cane.
63. The Third Defendant admits that a meeting took place in which the Claimant expressed an interest in rehabilitating 2,500 acres of sugar cane land. However, he denies that he indicated or

implied to the Claimant that the contract would be for four to five years. Instead, he alleges that the Claimant was informed that the contract would be for an initial period of one year and may be renewed from year to year until the First Defendant was ready to distribute the lands to its former employees. The Third Defendant also pleads that the Claimant was specifically informed that the SMCL was responsible for the award of the contract to the Claimant.

64. The Third Defendant admits that, based on recommendations made by the Transition Team, the First Defendant loaned equipment to the Claimant. However, he was unfamiliar with the terms upon which this was done.
65. The Third Defendant alleges that the SIT was established by the Ministry after contractors had been awarded contracts to maintain and harvest sugar cane for the 2004 crop, to “*provide support to and promote a harmonious relationship between the contractors of sugar cane lands, of which the Claimant was one, and SMCL so as, initially, to ensure a supply of 75,000 tonnes of sugar cane to SMCL for the 2004 crop*”. As such, he contends that that the SIT was not a servant or agent of the First Defendant and the SIT was not authorized to nor did it enter into any contract with the Claimant. Further the Third Defendant alleges that when the Claimant sought confirmation from the SIT regarding preparation for the 2005 crop, they were advised by the Third and Fourth Defendants not to proceed with preparations for sugar cane until further notice.
66. In March 2004, the Third Defendant as Chief Operation Officer of the SIT made a recommendation to the Chairman of the SIT, who was the Permanent Secretary of the Ministry, for sugar cane production for 2005 to 2006. When the Chairman advised the Third Defendant that his recommendations had been approved by the Ministry, the Third Defendant informed the Claimant by letter dated 3<sup>rd</sup> June 2004 that approval had been granted to the Claimant to harvest cane for the crop year 2005 and that the Claimant would be required to enter into a formal contract with the First Defendant for occupation of its land and with the SMCL with respect to the supply of sugar cane.
67. With respect to the letter dated 29<sup>th</sup> November 2004, the Third Defendant admits the same but alleges that it was written to facilitate the Claimant’s request to seek financing and the Claimant knew that the letter was not intended to be a contract.
68. The Third Defendant admits that a letter dated 3<sup>rd</sup> February 2005 was sent by Mr. Washington to the Claimant requesting that the Claimant refrain from further crop operations until advised.

However, he also admits that in subsequent meetings held with the Claimant's representatives, he sought to allay the Claimant's concerns regarding preparations for the 2005 to 2006 sugar crop and assured the Claimant's representative, Mr Praitnath Sawh, that approval had been granted for sugar cane production for 2005 to 2006. The Third Defendant contends that he was merely echoing the sentiments of the Minister of Agriculture who stated that Cabinet had approved the occupation by contractors of Caroni lands for a period including 2006.

69. The Third Defendant alleges that at a meeting which he attended at Whitehall, the Honourable Dr. Lenny Saith, the Acting Prime Minister, informed those present that approval had been granted for occupation of the lands by contractors for 2006. As such, the Claimant would be permitted to harvest the sugar cane on land then occupied by it in early 2006 and immediately thereafter it would have to vacate the sugar cane fields of the First Defendant.
70. The Third Defendant admits knowing that the Claimant was carrying out work for the 2006 sugar cane crop but he denies ever holding himself out as having authority to contract on behalf of the First and/or Second Defendant.
71. He also denies that the Claimant suffered loss or damages as alleged or at all. As such, he contends that the Claimant is not entitled to any of the reliefs claimed against him.

### **Issues**

72. The Claimant, the First Defendant and the Second Defendant filed separate Statements of Issues. The Third Defendant filed a Notice that he agreed with the Statement of Issues filed by the Claimant. Having reviewed these Statements, I am of the opinion that the following issues arise for determination herein:

**I. (a) Whether the Claimant entered into a contract with the First Defendant and/or the Ministry for the cultivation, maintenance and harvesting of sugar cane on the First Defendant's lands for the crop years 2004, 2005 and 2006 and for the rental of the First Defendant's equipment?**

**(b) If so, was there a breach of contract by the First Defendant and/or the Ministry when the First Defendant entered upon the subject lands in August/September 2005 and/or, on 1st September 2005, requested the Claimant to return its equipment**

**within fourteen days and/or, on 21<sup>st</sup> October 2005, requested the Claimant to return the equipment immediately and vacate the subject lands within fourteen days?**

- II. Whether the First Defendant or any person and/or entity on its behalf granted permission to the Claimant to occupy its lands and to maintain, cultivate and harvest sugar cane thereon for crop 2006?**
- III. Did the First Defendant grant to the Claimant a licence coupled with an interest by reason whereof the First Defendant was estopped from requiring the Claimant to deliver up possession of the lands it occupied and to return the equipment which it had made available to the Claimant for harvesting canes in the 2004 and 2005 crop years?**
- IV. Was the Claimant entitled in equity to cultivate and harvest the lands it occupied with equipment supplied by the First Defendant for a period of three years from 29<sup>th</sup> November 2004?**
- V. Is the First Defendant liable to the Claimant in trespass for its entry into possession of the subject lands in August/ September 2005?**
- VI. Is the Claimant entitled to recover damages and/or exemplary damages against the First Defendant?**
- VII. Is the Claimant entitled to an injunction to restrain the First Defendant, its servants or agents, from entering onto or from trespassing onto the lands and/or interfering in any way with the Claimant's occupation thereof?**
- VIII. Did the Ministry and/or the Third Defendant have authority, real or apparent, to act on behalf of the First Defendant at any material time?**

**IX. If not, is the Second Defendant and/or the Third Defendant liable to the Claimant for damages for breach of warranty of authority?**

**The Evidence**

73. In support of its claim, the Claimant called Mr. Ranjit Bahadoorsingh, Mr. Praitnath Sawh and Mr. Ralph Sawh. The First Defendant called Mr. Clarence Rambharat and Mr. Deosaran Jagroo, the Second Defendant did not call any witnesses and the Third Defendant gave evidence in support of his Defence.

**Analysis of Issues**

**I. (a) Whether the Claimant entered into a contract with the First Defendant and/or the Ministry for the cultivation, maintenance and harvesting of sugar cane on the First Defendant's lands for the crop years 2004, 2005 and 2006 and for the rental of the First Defendant's equipment?**

**(b) If so, was there a breach of contract by the First Defendant and/or the Ministry when the First Defendant entered upon the subject lands in August/September 2005 and/or, on 1st September 2005, requested the Claimant to return its equipment within fourteen days and/or, on 21<sup>st</sup> October 2005, requested the Claimant to return the equipment immediately and vacate the subject lands within fourteen days?**

**Crop 2004**

74. In its Re-Amended Statement of Case, the Claimant alleged that in or about September 2003 the Ministry through the Third Defendant, its Chief Operations Officer, negotiated and contracted with the Claimant to carry out harvesting of sugarcane on the First Defendant's lands and at all material times was the servant and/or agent of the First Defendant. Further, the Claimant alleged that private farmers were requested by the First Defendant to meet with SMCL to discuss their



capabilities in relation to managing and cultivating abandoned sugarcane fields of the First Defendant.

75. The Claimant also alleged that the Third Defendant made a proposal to the Claimant to rehabilitate 2,500 acres of abandoned sugar cane fields. The Claimant raised with the Third Defendant the question of the duration of the contract and the Third Defendant indicated that arrangements would be put in place for a long-term contract for cultivation for a period of four to five years.
76. Thereafter, on the 17<sup>th</sup> September 2003, the Claimant submitted a proposal to SMCL which was accepted by SMCL by letter dated 29<sup>th</sup> September 2003 and a contract was entered into between the Claimant and SMCL as agent of the First Defendant.
77. In his witness statement, Mr. Praitnath Sawh stated that he and his brother, Ralph Sawh, on behalf of the Claimant, held meetings with SMCL in September 2003 and these meetings were arranged by the Corporate Secretary of the First Defendant, Mr. Rambharat.
78. Under cross-examination, however, Mr. Sawh admitted that it was the Third Defendant, and not Mr. Rambharat, who had arranged the meetings. Further, he admitted that the Claimant's proposal was submitted to SMCL, and not to the First Defendant, and that SMCL, and not the First Defendant, accepted that proposal.
79. In his witness statement, Mr. Praitnath Sawh also stated that when he questioned the Third Defendant about the duration of the contract, the Third Defendant responded that arrangements would be put in place for a long-term contract for cultivation of period of four to five years *"but in the meantime formal permission would be given on a yearly basis"*. Further, under cross-examination by Counsel for the First Defendant, Mr. Praitnath Sawh stated that he understood that to mean on a year by year basis until a formal contract was drawn up.
80. In my opinion, it is clear from the evidence of the Claimant's witnesses that in September 2003, the Claimant was made aware of the Government's plan to restructure the sugar industry and that the First Defendant had ceased cultivation and processing of sugar cane on or about July 2003. The Claimant was also informed that there was a shortfall of supply of sugar cane to the sugar mill and that Government had taken a decision to make available to harvesting contractors lands of the First Defendant for cultivation and harvesting of sugar cane to make up the deficit. Further, the Claimant was informed that SMCL had been incorporated for the purpose of

processing and refining sugar cane harvested by sugar cane farmers and harvesting contractors. I am also satisfied that, as part of the arrangement discussed at a meeting held in September 2003 between the representatives of the Claimant and representatives of SMCL and the Third Defendant, as a member of the Transition Team, it was understood and agreed that the Claimant would be permitted to enter upon the First Defendant's lands to carry on cultivation, maintenance and harvesting of sugar cane for supply to SMCL for crop 2004 and that the Claimant would also be permitted to utilise certain equipment of the First Defendant to carry out its operations. Subsequently, by letter dated 13<sup>th</sup> October 2003, the First Defendant also granted permission to the Claimant to occupy and use the Exchange pen yard and buildings. Thereafter, the Claimant carried out cultivation, maintenance and harvesting of sugar cane fields located on the First Defendant's lands for crop 2004.

81. However, it is not in dispute there was no formal arrangement, such as a lease, a licence or a rental agreement, made between the First Defendant and the Claimant in respect of the Claimant's entry upon the First Defendant's lands and its activities thereon. The First Defendant, being aware of Government's restructuring plans for the sugar industry, simply facilitated (by not objecting) the implementation of those plans which necessarily included the Claimant's entry upon its lands and the utilisation of its harvesting equipment. In so doing, I am of the opinion that the First Defendant impliedly permitted the Claimant to enter upon its lands and to utilise its equipment and this amounted to a bare licence, but not a contract between the Claimant and the First Defendant with respect thereto.
82. Further, I find that, on the evidence, in September 2003 the Third Defendant was not acting on behalf of the Ministry but was a member of the Transition Team. Mr. Praitnath Sawh was made aware, from the Third Defendant's response to his enquiry about the duration of the contract to be offered to the Claimant, that the Claimant could only be given a year-to-year contract because of the First Defendant's obligation to distribute lands to its former workers pursuant to a VSEP package offered to those workers when the First Defendant ceased operations.
83. Accordingly, in respect of crop 2004, I find that the Claimant entered into a contract with SMCL, and not with the First Defendant, to carry out cultivation, maintenance and harvesting of sugar cane fields on the First Defendant's lands and to supply harvested cane to SMCL for processing. I also find that in entering into this contract, SMCL was not acting as agent of the First Defendant,

but in its own right as the newly-incorporated company set up to carry out the processing and refining of cane. Further, I find that the First Defendant impliedly granted a bare licence to the Claimant to enter upon its lands to carry out its contractual obligations to SMCL, including the Exchange pen yard and buildings, and to utilise its equipment for that purpose. At that stage, the Third Defendant held no position in the Ministry and therefore was not acting on behalf of the Ministry. Therefore, the Ministry did not negotiate or contract with the Claimant, as agent of the First Defendant, or at all.

### **Crop 2005**

84. The Claimant alleged in its Re-Amended Statement of Case that during the harvest of crop 2004, Mr. Praitnath Sawh again raised with the Third Defendant, by then the Chief Operations Officer of SIT, his concern that the Claimant did not have a formal contract for four to five years. Thereafter, on 3<sup>rd</sup> June 2004, the Claimant received a letter dated 3<sup>rd</sup> June 2004 from SIT signed by the Third Defendant.
85. In his witness statement, Mr. Praitnath Sawh gave evidence that the letter dated 3<sup>rd</sup> June 2004 did not address a formal agreement but gave permission for harvesting for the year 2005.
86. The Claimant relies on the SIT letter dated 3<sup>rd</sup> June 2004 to support its submission that the Claimant no longer dealt with the First Defendant and SMCL and that the SIT was acting on behalf of the First Defendant.
87. It cannot be disputed that the SIT played a role in securing the Ministry's approval of the Claimant as a harvesting contractor for crop 2005. The Third Defendant gave evidence that in March 2004, he had submitted recommendations for the consideration of the Permanent Secretary with respect to crop 2005 which were approved. Consequent on such approval, he wrote the letter dated 3<sup>rd</sup> June 2004 to the Claimant.
88. However, I am of the opinion that this letter does not support the submission that the SIT was acting on behalf of the First Defendant. The letter expressly notified the Claimant that it will be required to enter into a formal agreement with the First Defendant in respect of the temporary occupation of its lands and a further agreement with SMCL in respect of the supply of sugar cane to the Factory in crop 2005. The Claimant did not take any steps to secure formal agreements with the First Defendant or SMCL but simply continued to occupy its lands and to maintain,

cultivate and harvest sugar cane therefrom for crop 2005. In my opinion, the Claimant's continued occupation of the First Defendant's lands did not give rise to a contract, through the agency of the SIT, but was no more than an extension for another crop year of the bare licence impliedly granted by the First Defendant on or about September/October 2003, consistent with its continued facilitation of the Government's restructuring plans.

89. Accordingly, I find that for crop 2005, notwithstanding the absence of a formal agreement between the Claimant and SMCL, the Claimant continued to occupy the First Defendant's lands pursuant to a bare licence impliedly granted by the First Defendant and that it continued its cultivation, maintenance and harvesting operations pursuant to an implied extension of its contract with SMCL through a course of dealings. Further, I find that the Claimant has failed to prove that it entered into any contract with the Ministry for crop 2005 as agent of the First Defendant or at all.

#### **Crop 2006 and beyond**

90. Mr. Praitnath Sawh also gave evidence that subsequent to receipt of the letter dated 3<sup>rd</sup> June 2004, he requested from the SIT a letter for his bankers to show that he had a contract to cultivate cane and that he would have an income for 2005 and beyond. The Claimant then received a letter dated 29<sup>th</sup> November 2004 from SIT, signed by the Fourth Defendant, which stated that "*This contract would extend for the next three (3) years.*" As a result of this letter, the Claimant was then able to obtain more financing as evidenced by a letter dated 15<sup>th</sup> December 2004 from First Citizens Bank Limited.
91. Firstly, there is no evidence that the SIT's letter was written with the knowledge and/or authorisation of either the First Defendant and/or the Ministry. Unfortunately, I did not have the benefit of testimony from the Fourth Defendant with respect to the letter dated 29<sup>th</sup> November 2004, due to his passing prior to the trial. However, the factual context of this letter was that the Claimant was well aware that its request for a long-term contract had not been approved in September 2003 or in June 2004. Mr. Sawh had been told by the Third Defendant that formal approval of the Claimant as a harvesting contractor could only be given on a year-to-year basis because of the First Defendant's obligations to distribute its lands to its former workers in accordance with its VSEP package.

92. Taking these facts into account, I do not construe SIT's letter dated 29<sup>th</sup> November 2004 to mean that the SIT granted an extension of the Claimant's contract for three years from the date of the letter. In any event, based on my earlier findings that the Claimant did not have any contract with the First Defendant and/or the Second Defendant, I find that this letter did not grant to the Claimant any contractual right to remain in occupation of the First Defendant's lands for three years from 29<sup>th</sup> November 2004.
93. The Claimant also contended that it was given approval by the Third Defendant to continue its operations as a harvesting contractor on the First Defendant's lands for crop 2006. In its Re-Amended Statement of Case, the Claimant alleges that by letter dated 3<sup>rd</sup> February 2005 the Fourth Defendant, on behalf of SIT requested the Claimant not to undertake any future crop operations until further advised. Subsequently, Mr. Praitnath Sawh held meetings with the Third Defendant concerning the preparations already undertaken by the Claimant for crop 2006 whereupon the Third Defendant advised him to continue preparations. In particular, in April 2005, the Third Defendant advised Mr. Sawh to go ahead with preparations and stated that "*the sugar industry is here to stay, it is like steel pan*"
94. The Claimant then proceeded to purchase substantial amounts of fertiliser, herbicide and weedicides from the First Defendant.
95. In his witness statement, Mr. Praitnath Sawh gave evidence that when he met with the Third Defendant after receipt of the SIT letter dated 3<sup>rd</sup> February 2005, he was advised that the Chairman of the SIT had already given the Third Defendant permission for sugar cane production for 2005 and 2006. On that basis, the Claimant continued preparation of the 2006 sugar crop. He also confirmed the alleged conversation with the Third Defendant in April 2005. He also gave evidence that by letter dated 28<sup>th</sup> February 2005 the Claimant submitted a request for the purchase of herbicide for the 2006 crop which was approved by officials of the First Defendant, including its Acting Chief Executive Officer, Mr. Deosaran Jagroo.
96. The Claimant's account of what transpired after the SIT letter dated 3<sup>rd</sup> February 2005 was in large measure corroborated by the Third Defendant. He admitted that the Claimant was advised by SIT to proceed with preparations for crops 2005 and 2006 and he said this was based on the approval of the Permanent Secretary of his recommendations made in March 2004. He also admitted that sometime in 2005 he told Mr. Sawh that "*the sugar industry is here to stay, it is like*

*steel pan*" and he stated that he was echoing a statement made by the Minister of Agriculture at an official function at the SMCL compound.

97. What must be determined is whether the First Defendant and/or the Ministry agreed that the Claimant would be a harvesting contractor for Crop 2006 and whether, at that stage, the Third Defendant, as the Chief Operations Officer of SIT, was acting on behalf of the First Defendant and/or the Ministry.
98. In my opinion, the Claimant has failed to adduce any persuasive evidence that the First Defendant directly agreed with the Claimant to permit the Claimant to continue in occupation of its lands beyond the end of Crop 2005. The SIT letter dated 3<sup>rd</sup> February 2005 advised the Claimant *"to refrain from undertaking any Future Crop operations after the fields have been harvested in Crop 2005"*. The letter explained that *"in the restructuring of Caroni (1975) Ltd., those workers who applied for Agricultural holdings have been promised two (2) acres of land. Every section has been identified with an acreage and a crop/crops, but the exact location has not been indicated. Therefore all harvesting contractors are **not** to undertake Future Crop Operations until so advised."* The Claimant had been informed by SIT since the 3<sup>rd</sup> June 2004 that it was required to enter into a formal agreement with the First Defendant in respect of the temporary occupation of its lands. Yet, in February 2005, when it was given this clear and unambiguous instruction by the SIT, the Claimant failed to contact the First Defendant to seek its approval for its continued occupation of its lands. Instead, the Claimant relied on the verbal assurances of the Third Defendant, who was no longer an employee or officer of the First Defendant, to proceed with crop preparations for crop 2006.
99. The Claimant also sought to rely on its request dated 28<sup>th</sup> February 2005 to purchase 5,000 liters of herbicide which was approved by the First Defendant. This letter stated *"we are presently contracted by SMCL to cultivate approximately 3000 acres of Sugar Cane on Caroni (1975) Ltd lands. This herbicide is urgently needed to undertake future crop work..."*
100. Under cross-examination by Counsel for the First Defendant, Mr. Praitnath Sawh responded that *"the contract was with SMCL and not with Caroni at this time. I never had any contract with Caroni. I knew Caroni wanted to get rid of herbicide and I needed it.... Mr. Jagroo approved sale of herbicide to claimant."*

101. In my opinion, Mr. Sawh's evidence that he was making an urgent purchase of herbicide in late February 2005 for use in Crop 2006 is not credible. The Claimant had been advised in writing in early February 2005 to refrain from future crop work. He does not state that between 3<sup>rd</sup> February and 28<sup>th</sup> February 2005 he had been given the approval by anyone to proceed with Crop 2006. Yet, he makes an urgent purchase of herbicide for future crop work at the end of February. This purchase does not support the Claimant's contention that the First Defendant impliedly consented to an extension of the contract or tacitly approved of the Claimant maintaining and harvesting the sugar cane crop for 2006. Accordingly, I am not satisfied that the First Defendant, by agreeing to sell herbicide to the Claimant in late February 2005, was entering into a contract to permit the Claimant to continue in occupation of its lands for crop 2006.

102. The next question to be answered, therefore, is whether the Third Defendant and/or the SIT and/or the Ministry was acting on behalf of the First Defendant to create a contractual obligation to permit the Claimant to remain in occupation of the First Defendant's lands for crop 2006.

103. The Claimant sought to rely on the Third Defendant's evidence that he had been given verbal approval by the Permanent Secretary of the Ministry in or about March 2004 of his recommendations contained in a document headed "*Proposed Sugar Cane Production 2005 to 2006*". The Claimant submits that this document was accepted and approved by the Ministry and proves that there was approval for the Claimant to be a harvesting contractor for crop 2006.

104. A close examination of this document reveals, however, that:

- i. The Third Defendant drew a distinction between the cultivation and harvesting by sugarcane farmers (650,000 tonnes of sugarcane) and by independent contractors on lands currently owned by the First Defendant (250,000 tonnes);
- ii. Mr. Inniss recommended certain initiatives "*to be implemented so as to satisfy the raw material production requirement for 2005*". With respect to farmers, he recommended that there should be continued support to sugarcane farmers by encouraging them "*to accept responsibility for management of their businesses using the principal of progressive responsibility phased over a period of three (3) years.*";
- iii. He makes specific reference to the Claimant as one of two mechanical harvesting contractors and recommends that the Claimant continue to maintain and harvest 2,000 acres;

iv. He also recommended that the *"same support granted to Cane Farmers must be extended to the Independent Contractors, in particular, Froghopper Control and Fertilizer Subsidy where available. Harvesting and cultivation equipment owned by Caroni (1975) Limited will be made available to the Independent Contractors to assist in their operations."* He also recommended that support be given to the Independent Contractors with respect to access roads maintenance, payment for transportation of sugarcanes to the Factory and the provision of extension services through the SIT with the Ministry to deal with quality issues at source;

v. He concludes his Report in the following manner:

*"In order to ensure the success of the 2005 Crop, it is imperative that the necessary Future Crop Agronomic Activities Program be undertaken immediately after the fields are harvested in 2004. In particular, the weed control operations must be undertaken at the appropriate times if the extraneous matter levels are to be achieved.*

*It is therefore recommended that the Independent Contractors be immediately advised that they can begin their respective programmes of Future Crop Activities".*

105. Under cross-examination about this document by Counsel for the First Defendant, the Third Defendant gave the following evidence:

*"The entire document refers to 2005-2006. Apart from the heading, the document does not refer to 2006. Document refers to production in 2005. It implies that it is 2006. It does not say so. At beginning, in first 3 paragraphs it says 2005. At end, it refers to success of 2005 crop. When I say recommendation was approved, it does not mean 2005 only. It was also for 2006. I agree there was nothing in body that referred to 2006. Recommendation was for 2005 and 2006 crop."*

106. In evaluating this evidence, I must take into account the fact that the Third Defendant failed to call the Permanent Secretary to corroborate his evidence or to adduce any contemporaneous documentary evidence of approval for crop 2006. Further, the terms of the document emphasise crop 2005 and fail to make any specific mention of crop 2006, apart from in the heading of the document. Further, in June 2004, after the Third Defendant says he had been given verbal



approval by the Permanent Secretary for crops 2005 and 2006, he sent a letter dated 3<sup>rd</sup> June 2004 to the Claimant notifying it that it had been approved as a harvesting contractor for 2005 but he failed to mention that approval had also been given for crop 2006.

107. In my opinion, this document should be construed to mean that the Third Defendant was making recommendations with respect to crop 2005 only and not crop 2006. The reference to three years at clause 5 (c) is clearly made in relation to the Sugar Cane Farmers and not the Independent Contractors. Further, given the timing of this Report (early March 2004) and the several express references to crop 2005, it is clear that these recommendations were focused on crop 2005 only and there is nothing therein that can be relied upon by the Claimant to support its contention that the Ministry at that time gave its approval for 2005 and 2006.

108. The Claimant also relied on a letter dated 4<sup>th</sup> May 2005 from the SIT concerning lands in the Waterloo Section as evidence that the Ministry impliedly consented to the extension of the Claimant's contract to crop 2006. This letter refers to certain fields allocated to the Claimant to maintain cane cultivation for crop 2006 and instructs the Claimant not to undertake any operations in some of these fields because of certain activities being undertaken by the staff of the Research and Extension Support Services.

109. In my opinion, although this letter refers to crop 2006, it does not imply that the Claimant had been given approval to be on the First Defendant's lands beyond the end of crop 2005. Further, I am not persuaded that the SIT, in writing this letter, was acting as agent for the First Defendant in any respect. Also, given the fact that the letter was written before the end of crop 2005, it does not imply that the instructions given in the earlier SIT letter dated 3<sup>rd</sup> February 2005 no longer applied. In the February letter, the Claimant was advised to refrain from further operations because the exact location of the lands to be distributed to the former workers of the First Defendant had not yet identified. The later letter of May 2005 does not override the clear instructions of the February letter and I am not satisfied that I should imply that, by reason thereof, the Second Defendant was consenting to an extension of the Claimant's contract beyond June 2005.

110. The Claimant also relied on the evidence of the Third Defendant that the SIT wrote to the First Defendant on the 27<sup>th</sup> September 2005 requesting a deferral of the clearing of sugar canes until the crop is harvested in 2006 and that thereafter a meeting was held at Whitehall, chaired by the

Acting Prime Minister, at which a decision was taken to permit the contractors, farmers and Cane Farmers' Associations to harvest their sugar cane early in crop 2006 and then surrender the lands to the First Defendant. Further, the Third Defendant said that he had discussions with Mr. Jagroo, the Acting Chief Executive Officer of the First Defendant who informed him that an agreement had been reached with the Workers' Union to waive the Industrial Court's Order and that the First Defendant would be free to dispose of its rolling stock on the basis of where the equipment now exists.

111. There are several points that should be noted about the Third Defendant's evidence:

- a) SIT's letter dated 27<sup>th</sup> September 2005 is a request for a deferral. It is consistent with the fact that the First Defendant had made a decision to resume control of its lands in order to begin the distribution to its former workers. Further, there is no evidence that this request was granted by the First Defendant;
- b) The Third Defendant's evidence is inconsistent with his Defence. At paragraph 30 of his Defence, the Third Defendant alleged that at the meeting held at Whitehall, Senator Lenny Saith informed the persons present at the meeting that "*Cabinet had approved the occupation of the said lands by the contractors for a period including 2006 and a decision was taken that, inter alia, the Claimant would be permitted to harvest the sugar cane on lands then occupied by it in early 2006 and immediately thereafter would have to vacate the said sugar cane lands to the First Defendant.*" However, in his witness statement, the Third Defendant makes no reference to a Cabinet decision but states that at the meeting at Whitehall a decision was taken to permit the contractors, sugar cane farmers and Cane Farmers' Associations to harvest their sugar cane in early 2006;
- c) The Third Defendant failed to produce any documentary evidence, such a minutes of the meeting held at Whitehall or a Cabinet Minute, to prove that there was any such meeting or any such decision;
- d) Even if such a meeting took place and a decision was taken to that effect, there was no evidence that the First Defendant was party to the discussions and the decision. Further, the Third Defendant was quite clear in his evidence that neither he nor SIT were authorised to act as the servant or agent of the First Defendant;

e) In any event, such a purported decision could not as a matter of law override the First Defendant's legal obligation to distribute the lands in accordance with the terms of an order of the Industrial Court, a court of superior record;

f) Although the Third Defendant gave evidence that Mr. Jagroo, the Acting CEO of the First Defendant informed him that the Industrial Court order had been waived, no documentary evidence was produced to prove that there had been any variation, waiver or deferral of the Court's order.

112. In the circumstances, upon a review of the evidence relied upon by the Claimant to establish a contract with the First Defendant and/or the Second Defendant that permitted it to remain in occupation of the First Defendant's lands for crop 2006, I have come to the conclusion that the Claimant has failed to prove that there was in existence a contract with the First Defendant and/or the Second Defendant for the maintenance, cultivation and harvesting of the cane fields on the First Defendant's lands for crop 2006.

113. Accordingly, when the First Defendant, through its agents, carried out brushcutting and bulldozing of its lands in August and September 2005 to prepare the lands for distribution to its former workers, it was not in breach of contract.

## **II. Whether the First Defendant or any person and/or entity on its behalf granted permission to the Claimant to occupy its lands and to maintain, cultivate and harvest sugar cane thereon for crop 2006?**

114. The Claimant also argued that it was granted permission to maintain, cultivate and harvest sugar cane for crop 2006. From my earlier review of the evidence and the Claimant's submissions thereon, it is clear that the Claimant was not relying on any express permission granted to the Claimant by the First Defendant's officers but was seeking to imply that such permission was granted on behalf of the First Defendant by the Third Defendant as the Chief Operations Officer of the SIT.

115. In my opinion, although the Third Defendant admitted that he advised the Claimant to proceed with preparations for crop 2006, at all material times, he was purporting to act as an officer of the SIT, which was an entity appointed by the Ministry, and not on behalf of the First Defendant. The SIT had itself given instructions to the Claimant to refrain from undertaking any future crop

operations after the fields were harvested in crop 2005 precisely because it was aware that the First Defendant intended to identify and allocate two acre plots to former workers. There was no evidence adduced at the trial by the Claimant or the Third Defendant that, subsequent to 3<sup>rd</sup> February 2005 and before the Third Defendant gave the go-ahead to the Claimant, the Claimant or the Third Defendant or anyone else from the SIT or from the Ministry was in communication with the First Defendant about a change in the First Defendant's plans.

116. Further, the Third Defendant sought to justify his advice to the Claimant on the basis that he had been authorised by the Permanent Secretary of the Ministry to give such permission and that a decision was taken at a meeting at Whitehall to permit the harvesting contractors, including the Claimant, to continue crop preparations. However, he failed to persuade me that he had any such approval from the Permanent Secretary since March 2004 in respect of crop 2006 and he failed to adduce any oral testimony or documentary evidence to corroborate the alleged decision at Whitehall. In any event, any such decision would not bind the First Defendant which was a separate legal entity from the Ministry.

117. In the circumstances, I find that the Claimant has failed to prove that the First Defendant or any person and/or entity on its behalf granted permission to the Claimant to occupy its lands and to maintain, cultivate and harvest sugar cane thereon for crop 2006.

**III. Did the First Defendant grant to the Claimant a licence coupled with an interest by reason whereof the First Defendant was estopped from requiring the Claimant to deliver up possession of the lands it occupied and to return the equipment which it had made available to the Claimant for harvesting canes in the 2004 and 2005 crop years?**

118. As earlier stated, I am of the opinion that, in respect of crops 2004 and 2005, the First Defendant impliedly permitted the Claimant to occupy its lands and that such implied permission amounted to a bare licence. There is no dispute raised about these periods by the First Defendant. However, with respect to crop 2006, the Claimant has alleged that it was granted a licence, coupled with an interest, by the First Defendant by reason whereof the First Defendant was estopped from requiring the Claimant to deliver up possession of the First Defendant's lands and its equipment.

119. In my opinion, the Claimant has failed to prove that it was granted a licence coupled with an interest by the First Defendant. Based on my earlier findings, the First Defendant's implied permission to the Claimant to enter upon its lands and to utilise its equipment to carry out its harvesting operations was only for crops 2004 and 2005 and was not extended beyond the end of crop 2005 in June 2005. In fact, it was made clear to the Claimant since February 2005 that it would be required to cease harvesting operations after the end of crop 2005.

120. In Clerk & Lindsell on Torts<sup>1</sup>, the authors provided some useful guidance relative to the rights of a licensee:

*"A licensee who exceeds his licence is a trespasser.... A licensee who remains on land after his licence has expired or is properly revoked is a trespasser. He is entitled, however, to a reasonable time for "packing up", in which to leave and to remove his goods, and until such reasonable time has elapsed he cannot be prevented from entering on the land for the purpose of removing his goods...."*

121. Further, the Claimant has not satisfied me that by reason of any acts or assurances or representations of the First Defendant, either directly or through the acts of any servant or agent, it acted to its detriment thereby entitling it to enforce an estoppel against the First Defendant.

122. Accordingly, I find that the First Defendant did not grant to the Claimant a licence, coupled with an interest, to remain in occupation of its lands after the end of crop 2005 and that the First Defendant was not estopped from requiring the Claimant to deliver up possession of the said lands and equipment in its possession. Therefore, when by letter dated 1<sup>st</sup> September 2005, the First Defendant requested the return of its equipment within two weeks, it was entitled so to do and when the First Defendant, by letter dated 21<sup>st</sup> October 2005, reminded the Claimant of its earlier request and called upon the Claimant to return the equipment immediately and to vacate its lands within fourteen days, it was also entitled so to do since as at the date of those letters, the Claimant was a trespasser upon the Claimant's lands.

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<sup>1</sup> 19th Ed. at para. 19-46

**IV. Was the Claimant entitled in equity to cultivate and harvest the lands it occupied with equipment supplied by the First Defendant for a period of three years from 29<sup>th</sup> November 2004?**

123. For all the reasons hereinbefore recited in relation to the SIT letter dated 29<sup>th</sup> November 2004, I am also not satisfied that this letter granted to the Claimant an equitable right to remain in occupation of the First Defendant's lands and in possession of its equipment for three years from the date of the letter.

124. From inception of the arrangement for the Claimant to be a harvesting contractor on the First Defendant's lands, the Claimant was aware that it was a short-term arrangement which would be reviewed on a year to year basis. The Claimant also knew, from its efforts to secure a long-term contract, that the reason why it could not be granted a long-term contract was because the First Defendant was under a legal obligation to distribute its lands to its former workers in accordance with its VSEP package. When the Claimant requested from the SIT a letter for its bankers and was provided with the letter dated 29<sup>th</sup> November 2004, he must have known that this letter could not amount to an extension of his contract with SMCL or a grant of permission to remain in occupation of the First Defendant's lands for three years. The Claimant did not lead any evidence that the First Defendant was consulted before that letter was written or that the First Defendant was even aware of its request for such a letter or the terms of same.

125. Accordingly, based on the Claimant's evidence, I am of the view that it would not be fair, just and/or equitable for this Court to find that, based on the said letter dated 29<sup>th</sup> November 2004, the Claimant was entitled to continue to cultivate and harvest the First Defendant's lands with its equipment for a period of three years from the 29<sup>th</sup> November 2004.

**V. Is the First Defendant liable to the Claimant in trespass for its entry into possession of the subject lands in August/ September 2005?**

**VI. Is the Claimant entitled to recover damages and/or exemplary damages against the First Defendant?**

**VII. Is the Claimant entitled to an injunction to restrain the First Defendant, its servants or agents, from entering onto or from trespassing onto the lands and/or interfering in any way with the Claimant's occupation thereof?**

126. For all the reasons hereinbefore set out, I have come to the conclusion that the Claimant is not entitled to succeed on its claim against the First Defendant for damages for trespass, including exemplary damages. Further, I also find that the Claimant was not entitled to an injunction against the First Defendant to restrain it from entering upon its lands and/or interfering with the Claimant's occupation thereof.

**VIII. Did the Ministry and/or the Third Defendant have authority, real or apparent, to act on behalf of the First Defendant at any material time?**

127. On the evidence, the Third Defendant was acting as the Chief Operations Officer of SIT from January 2004. SIT had been formed by the Ministry to coordinate the production of an adequate supply of sugar cane for processing by SMCL for it to meet its targets. In that capacity, the Third Defendant, in March 2004, submitted recommendations for the consideration of the Permanent Secretary in the Ministry so as to satisfy the raw material production requirements for crop 2005. Based on his recommendations, the Claimant was approved as a harvesting contractor for crop 2005 and the Claimant was so notified in June 2004. By two letters dated 12<sup>th</sup> April 2005, the Ministry forwarded two large cheques to the Third Defendant for onward transmission to SMCL to subsidise the cost of fertiliser to be supplied to sugar cane farmers and contractors and froghopper control. The first letter stated as follows:

*"The Ministry of Agriculture, Land and Marine Resources in continuing its support to sugarcane farmers, has agreed to subsidise the purchase of 6,000 Metric Tonnes of Dry Blend 26-026 from National Agro Chemicals Limited for supply to sugarcane farmers and contractors in respect of Crop 2005/2006.*

*In this regard, we are forwarding for your attention and action Cheque No. .... for the sum of .... . This is to be forwarded to Sugar Manufacturing Company Limited (SMCL) for the purchase of the fertilizer from National Agro Chemicals Limited."*

128. In my opinion, therefore, there is evidence presented before this Court that the Third Defendant was vested with authority to act on behalf of the SIT which had been established by the Ministry.

129. What must be decided, however, is whether either the Ministry and/or the Third Defendant was vested with real or apparent authority by the First Defendant with regard to the representations

which were made to the Claimant to proceed with preparations of crop 2006. This is particularly important because it is not in dispute that the Claimant relied on the representations and assurances given by the Third Defendant to remain in occupation of the First Defendant's lands and in possession of the First Defendant's equipment well after the harvesting operations for crop 2005 were complete.

130. As earlier stated, the Third Defendant failed to convince me that his recommendations were approved by the Permanent Secretary of the Ministry for crop 2006. In my opinion, a reasonable interpretation of his recommendations in March 2004 was that he sought and obtained approval for crop 2005 only, and not crop 2006. Further, insofar as the Third Defendant relied on the authority of a decision made at a meeting at Whitehall, he failed to adduce oral or documentary evidence that he was duly authorised by that meeting to give permission to the Claimant to remain in occupation of the First Defendant's lands and in possession of its equipment. In any event, the Third Defendant made it clear in his witness statement that neither he nor the SIT was acting for and on behalf of the First Defendant at any time.

131. On a balance of probabilities, therefore, I am of the opinion that the Claimant has failed to prove that the Ministry and/or the Third Defendant was vested with actual authority to give approval to the Claimant on behalf of the First Defendant. Further, with respect to the apparent authority of the Third Defendant, I am also of the view that the Claimant was fully aware from previous correspondence sent by SIT in June 2004 that it was required to make formal arrangements with the First Defendant with respect to its temporary occupation of its lands for harvesting operations. The Claimant had also received the SIT letter dated 3<sup>rd</sup> February 2005 advising it to refrain from future crop operations after the harvesting of crop 2005. In the context of those facts, therefore, I am of the opinion that the Third Defendant was not vested by the First Defendant with apparent authority to create any binding legal obligation upon the First Defendant to permit the Claimant to remain in occupation of its lands and to allow the Claimant to retain possession of its equipment.



**IX. If not, is the Second Defendant and/or the Third Defendant liable to the Claimant for breach of warranty of authority?**

132. The law on warranty of authority is concisely summarised in the following passage from Bowstead & Reynolds on Agency<sup>2</sup>:

*"(1)Where a person, by words or conduct, represents that he has actual authority to act on behalf of another, and a third party is induced by such representation to act in a manner in which he would not have acted if that representation had not been made, the first-mentioned person is deemed to warrant that the representation is true, and is liable for any loss caused to such third party by a breach of that implied warranty, even if he acted in good faith under a mistaken belief that he had such authority.*

*(2)Every person who purports to act as an agent is deemed by his conduct to represent that he is in fact duly authorised so to act, except where the purported agent expressly disclaims authority or where the nature and extent of his authority, or the material facts from which its nature and extent may be inferred, are known to the other contracting party."*

133. Applying the law to the facts of this matter, the first issue to be determined is whether either the Ministry and/or the Third Defendant, by its words or conduct, represented that it or he had actual authority to act on behalf of the First Defendant with regard to the grant of permission to the Claimant to remain in occupation of the First Defendant's lands beyond the end of crop 2005 in June 2005 to carry out maintenance, cultivation and harvesting of crop 2006.

134. I have already found that the Claimant has failed to prove that either the Ministry the Third Defendant was vested with actual authority to give approval to the Claimant on behalf of the First Defendant. The Third Defendant gave evidence that when he verbally advised Mr. Sawh that he could proceed with preparations for crop 2006, he purported to do so as the Chief Operations Officer of the SIT and he did not represent that he had actual authority to act on behalf of the First Defendant. Further, Mr. Praitnath Sawh, at paragraphs 29, 30 and 31 of his

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<sup>2</sup> Bowstead & Reynolds on Agency (19th Ed.) para. 9-060

witness statement does not refer to any words or conduct on the part of the Third Defendant whereby he represented that he had any authority to act on behalf of the First Defendant.

135. Accordingly, I am of the view that when Mr. Sawh held meetings with the Third Defendant after receipt of the SIT's letter dated 3rd February 2005, he did so, on the basis that the Third Defendant was the Chief Operations Officer of the SIT. Further, when the Third Defendant gave Mr. Sawh the go-ahead to continue preparations for crop 2006, he was purporting to act on behalf of the SIT and not the First Defendant. In the light of the SIT letter to the Claimant dated 3<sup>rd</sup> June 2004, Mr. Sawh ought to have appreciated the limits of the Third Defendant's authority and taken steps to secure a formal agreement from the First Defendant to remain in occupation after June 2005. In other words, the Claimant ought not to have relied on the representation of the Third Defendant, do nothing to secure permission from the First Defendant to be in occupation after June 2005 and then seek to attribute responsibility to the First Defendant and/or the Second Defendant and/or the Third Defendant for the losses it sustained by reason of remaining in occupation of the First Defendant's lands, without permission.

136. Accordingly, I find that neither the Second Defendant nor the Third Defendant is liable to the Claimant for breach of warranty of authority.

### **Conclusion**

137. In the circumstances I find that the Claimant is not entitled to any of the reliefs claimed in the Statement of Case against any of the Defendants and its claim is hereby dismissed. The Claimant is ordered to pay the costs of the action to the Defendants together with the First Defendant's costs of the injunction (including the costs of the application to continue the injunction) and the costs of and occasioned by the amendments to the Statement of Case, to be assessed in default of agreement.

**Dated this 15<sup>th</sup> day of April 2014.**

**André des Vignes  
Judge**