

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2003/0373

BETWEEN:

ERIC WILLIAM LA QUA

Claimant

AND

JAMES LA QUA AND SONS ANGLO AMERICAN FUNERAL AGENCY LIMITED

Defendant

Appearances:

Mrs. Celia Edwards, Q.C., and Ms. Sabrita Khan for the Claimant
Mr. Lloyd Noel, Counsel on record for the Defendant

2009: July 15th, 16th

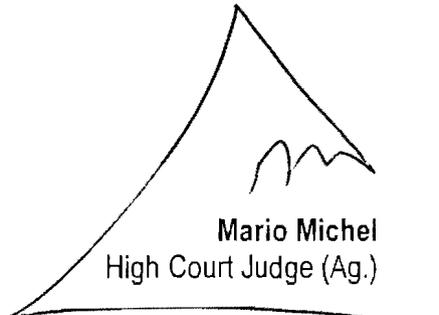
INTERLOCUTORY JUDGMENT

- [1] **MICHEL, J. (Ag.):** This case commenced on 8th September 2003 when a Fixed Date Claim Form was filed by the Claimant. In the nearly six years which have ensued, the case has generated several applications and produced several orders. I am the sixth judicial officer of the Eastern Caribbean Supreme Court to sit on the case, it having previously come before Master Brian Cottle, as he then was, Master Cheryl Mathurin, Justice Francis Belle, Justice Anthony Ross and Justice Francis Cumberbatch. Final case management was done by Ross J. on 12th September 2008 and a trial window was fixed for April 2009. The trial of the matter was later fixed for Monday 6th April to Wednesday 8th April 2009, but these dates were vacated. By notices served on the Chambers of Counsel for both parties on 24th June 2009, the trial was re-fixed for Wednesday 15th July to Friday 17th July 2009. When the matter was called at 9.00 a.m. on Wednesday 15th July 2009 Learned Counsel on record for the Defendant (as he prefers to be referred to for present purposes) sought leave to and did make a submission that the Court

cannot proceed with the trial of the matter because there was a mediation referral order made by Master Cottle on 14th June 2004 and this order has not been complied with and because the Defendant company is now in voluntary liquidation.

- [2] Having listened to and reviewed the submission by Learned Counsel on record for the Defendant and the reply by Learned Queen's Counsel on behalf of the Claimant, and having perused the relevant provisions of the Companies Act, 1994 of Grenada and the relevant paragraphs of Volume 7(2) of the Fourth Edition of Halsbury's Laws of England, the Court has come to the conclusion that the claim brought by the Claimant, Eric William La Qua, against the Defendant, James La Qua And Sons Anglo American Funeral Agency Limited, should proceed to trial notwithstanding that a voluntary winding up of the company might have commenced since 19th August 2005 when a resolution was passed that the company be voluntarily wound up and a liquidator appointed.
- [3] The Court declines at this time to make any determination on the validity of the resolution to wind up the company, on which the Court was addressed by Learned Queen's Counsel. Even though the resolution to wind up the company is perfectly valid and the voluntary winding up of the company did commence on 19th August 2005, this does not in law operate as a stay of proceedings against the company or prevent actions or other proceedings being brought or continued against the company. The Court does have jurisdiction to stay any action or proceeding against the company upon such terms as it thinks fit, but the onus lies on the liquidator of showing that an action against the company should be stayed. No application to this effect having been made in the nearly four years since the resolution of August 2005, the trial of the matter shall proceed.
- [4] The mediation referral order made by the Master on 14th June 2004 and later extended by Belle J. on 3rd May 2005 has now been rendered nugatory by effluxion of time, since the mediation was to have taken place by June 2005. In any event, the case was case managed thereafter and the issue of the earlier mediation referral order was not treated as an impediment to the trial of the matter.

- [5] The other issues raised by both Counsel as to the meaning and effect of the orders made by Masters Cottle and Mathurin and Justices Belle and Ross need not be determined at this time because, whatever their meaning and effect, there is a trial scheduled for today and tomorrow to resolve the issues in dispute between the parties, which trial came about after several inter parties interlocutory and case management orders. The trial is expected to determine the extent of the entitlement of the Claimant in the Defendant company and it matters not, in the making of this determination, whether the Defendant company is a going concern or a company in liquidation.
- [6] I accordingly want to urge Learned Counsel for the Defendant not to abandon the proceedings, but rather to consult - if this has not already been done - with the liquidator appointed by the resolution earlier referred to so that the interest of the Defendant company can be represented in the proceedings.



Mario Michel
High Court Judge (Ag.)