

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
ANTIGUA & BARBUDA**

**CLAIM NO. ANUHCV2007/0578**

**BETWEEN:**

**GEOTECH COMPANY LIMITED**

**CLAIMANT**

**and**

**AKINDELE LOOBY**

**DEFENDANT**

**Appearances:**

**Mrs. Eleanor Clarke Solomon for the Claimant**

**Ms. Kamilah Roberts and Ms. Andrea Roberts for the Defendant**

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**2010: 8, March**  
**2010: 12, October**  
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**JUDGMENT**

1. **Harris, J.:** The Claimant is a Company duly incorporated under the laws of Antigua and Barbuda with Registered Office at Church Street in the City of St. John's in the island of Antigua.
2. At all material times the Defendant was an employee of the Claimant.
3. The Claimant claims that the Defendant pay the sum of \$59,000.00 being as to \$11,000.00 the balance due on the purchase of property registered as Parcel 667 of Block 51 1888 A in Bendals

Registration Section and as to \$48,000.00 the balance due on the construction of a townhouse by the Claimant on the said property.

4. The Defendant repay the sum of \$4762.00 being the arrears in respect of a loan granted to the Defendant by the Claimant.
5. The sum of \$110,460.81 being the unauthorized and unjustified expenses incurred by the Defendant in the name of the Claimant.
6. An Order that the Defendant executes forthwith an indemnity in favour of the Claimant to relieve the Claimant from transactions which may result from the unlawful actions of the Defendant.
7. General Damages.
8. The Defendant counterclaims the sum of EC\$158,210.90 for Project Management and Architectural severance rendered to the Claimant and a loan made to the Claimant which remains due and owing to the Defendant.

#### THE CASE FOR THE CLAIMANT<sup>1</sup>

9. By an agreement in writing dated 4<sup>th</sup> April, 2003 the Claimant and Developers Unlimited entered into a joint venture agreement for the development of certain lands known as St. Clair Heights registered the name of Developers Unlimited Limited whereby it was agreed that the purchasers of plots in the development would pay the purchase price to the Claimant and that upon such payment Developers Unlimited Limited would transfer the land to the purchaser.
10. By letter dated 19<sup>th</sup> April, 2005, the Defendant, by using his position as chief executive Officer in the Company and purporting to act on behalf of the Claimant instructed Developers Unlimited Limited to prepare an Instrument of Transfer for himself in respect of land registered as Parcel 667

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<sup>1</sup> This is a substantial reproduction of aspects the claimant's statement of case and closing submissions

of Block 51 1888 A in Bendals Registration Section and measuring approximately 3000 square feet. A copy of the letter is several herewith. The said property was transferred to the Defendant at a gross undervalue in the sum of \$ 12,000.00 of which sum the Defendant paid only \$6,000.00. At the time the price of the land was \$17,000.00.

11. The procedure for the purchase of the property at St. Clair Heights involved an arrangement whereby the prospective purchaser would, at the time of the purchase of the land, enter into a contract with the Claimant for the construction of a town house on the said property. The Defendant failed to enter into such an agreement. A sample copy of such an agreement is served herewith. Subsequently, one Gloria Lake purporting to act on behalf of the Claimant signed a contract with the Defendant for the construction of a standard three-bedroom townhouse. A copy of the construction contract dated 28<sup>th</sup> July, 2005 is served herewith. That agreement was signed in contravention of a Court Order dated 6<sup>th</sup> June, 2005 hereinafter mentioned.
12. The Defendant paid the sum of \$220,000.00 for the construction of the said townhouse when the price of construction was \$268,000.00.
13. According to paragraph 2 of the Court Order dated 6<sup>th</sup> June, 2005 the Defendant was permitted to continue the day to day activities of Geotech Company Limited but was not permitted to enter into any new contracts whatsoever without obtaining prior approval of the Claimant. The claimant submitted that in contravention of that Court Order the Defendant has entered into contracts on behalf of the Claimant, thereby incurring debt and liability in the name of the Claimant. In further contravention of the said order the Defendant expended sums of money without any authority and justification to do so whatsoever. A list of all unauthorized and unjustified expenses was served with the statement of case.
14. In or around August, 2003 the Claimant granted a loan to the Defendant, and the sum of \$4,762.00 remains due and owing to the Claimant.
15. On several occasions contends the claimant, the Defendant unlawfully acted on behalf of the Claimant in that the Defendant made payments from the Claimant's account in respect of, but not limited to, repairs to the house, payment of utility charges incurred by one Myrtle Looby, and the Defendant's travel and entertainment expenses.

16. The list referred to by the Claimant set out all the alleged unauthorized expenditures by the Defendant.

#### THE CASE FOR THE DEFENDANT AND COUNTERCLAIMANT<sup>2</sup>

17. The Defendant admits that by letter dated the 19<sup>th</sup> day of April, 2005, he instructed Developers Unlimited Limited to prepare an instrument of Transfer in respect of the purchase of the parcel of land properly identified as Registration Section: Bendals, Block: 55 1888A, Parcel:667. The Defendant further admits that he purchased this parcel of land for \$6,000.00. However, the Defendant claims that he was entitled to purchase the parcel of land at a discount as compensation for the services rendered by him to the Claimant. Further or alternatively, as an employee occupying a managerial position in the Claimant Company and further as the Project Manager of the St. Clair Heights Development Project from inception, The Defendant claims that he was entitled to purchase the parcel of land at a discount.

18. In response to the allegations in paragraph 6 of the Statement of Claim, the Defendant admits that he paid EC\$220,000.00 for the construction of the townhouse. However, he denies that the price of construction was EC\$268,000.00. The amount of EC\$268,000.00 represented the selling price of the townhouse which sum included real estate agent fees, surveying fees, engineer fees, marketing and architectural fees. As an employee occupying a managerial position in the Claimant Company and further as the Project Manger of the St. Clair Heights Development Project from inception, the Defendant claims that he was entitled to enter into an agreement for the construction of the townhouse at the construction price.

19. The defendant responded to each item in the list of unauthorized payments which was served together with the statement of case of the claimant. The claimant is claiming for each of these items.

20. As to the payments to Myrtle Looby, in items 1 and 2 in the list of "Unauthorized and unjustified expenses by Geotech Company Ltd.", the standing Order in the amount of EC\$4,000.00 per month

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<sup>2</sup> This a substantial reproduction of the Defendant's/counterclaimant's statement of case and closing submissions.

to Myrtle Looby was started by the Claimant Company before the death of the shareholder, George Looby in December 2004. This expense was justified as it was a continuation of a previously authorized expense on the part of the Claimant Company.

21. As the payment to Rohna Mohan at item 3, this payment was again started by the Claimant Company prior to George Looby's death. The Defendant did not have prior knowledge of these payments and halted these payments, once the issue was brought to his attention.
22. As item 4 which relates to the reimbursement to Myrtle Looby for travel in December 2004, this amount relates to the travel expenses as incurred by Myrtle Looby, the ex-wife of George Looby in travelling to Grenada in order to attend Mr. Looby's funeral in December 2004. This expense was justified under all the circumstances of this case.
23. As to item 5, the payment to Donald Bailey for transportation in relation to the funeral of George Looby, this expense was a justified expense. The Company, Geotech Company Ltd paid all funeral expenses in relation to the funeral and burial of Mr. George Looby, based on the fact that he was the founder, sole shareholder and managing director for the Company.
24. As to item 6-12 which relate to travel expenses for the Defendant and his wife, Jeanelle Looby, these expenses were also justified company expenses as they related to the Defendant's travel between Trinidad and Antigua as necessitated by his employment with the Claimant Company. The Defendant was originally resident in Trinidad while the Claimant Company carried on business in Antigua. Since the Defendant commenced employment with the Claimant Company in 1999, the Claimant Company had paid all of the Defendant's travel expenses between Trinidad and Antigua.
25. As to item 13 and 14, which relate to the payment of the Cable Television bill for the house at Paradise View which was previously owned by the Defendant's father, George Looby, this obligation was first undertaken by the Claimant prior to Mr. Looby's death. The expense was therefore justified as it was a continuation of a previously authorized expense.
26. As to item 15 to 17, in relation to the payments to Azizi Harris, Ashley Thomas and saran Looby, these payments were justified as they were payments to the Children of George Looby, deceased

and were consistent with the Claimant Company's well established practice of making ex gratia payments at various stages to members of the family of the owner, George Looby.

27. As to item 18 and 19, in relation to the payments to United Insurance for the insurance of the house at Paradise View, this obligation was first undertaken by the Claimant prior to George Looby's death. The expense was therefore justified as it was a continuation of a previously authorized expense.
28. As to item 20, the funeral grant to Charleston Looby, Charleston Looby was at all material times employed with the Claimant Company as a quarry manager. The expense was therefore justified as a payment to an employee and family member upon the death of his mother and was consistent with the Claimant Company's previously established practice as detailed at paragraph 16 of the defense.
29. As to item 21 to 25, in relation to the payment of APUA and Cable and Wireless Utility Bills, the obligation to pay the utility bills for the house at Paradise View was first undertaken by the Claimant Company during George Looby's lifetime. The expense was therefore justified as it was a continuation of a previously authorized expense.
30. As to item 26 in relation to the repairs undertaken at the Paradise View house, this expense was justified as it is consistent with the Claimant's past assumption of responsibility for the maintenance and upkeep of Mr. George Looby's house at Paradise View.
31. As to item 28 which pertains to the legal fees and costs for regularizing the files at Company Registry, the Defendant acted honestly and in good faith in reliance on legal advice and therefore disputes any liability for the expenses in legal fees and costs as claimed. This expense should be properly borne by the Claimant Company.
32. As to item 29 of the List of Unauthorized and Unjustified Expenses by Geotech Company Limited, the Defendant admits that the amount of EC\$4,762.00 is due and owing the Claimant Company in relation to a loan which he obtained from the Company in 2003. However the Defendant denies that this loan was unauthorized and unjustified.

33. Paragraph 10 of the Statement of Claim was admitted. The Defendant accepts that the sum of EC\$4,762.00 is due and owing to the Claimant. However the Defendant notes that the Claimant has claimed for this amount twice as this amount is also included in the List of Unauthorized and Unjustified expenses as disclosed in paragraph 23 above.
34. Save for the fact that the Defendant admits that he owes the sum of EC\$4,762.00 being the arrears in respect of a loan granted to the Defendant by the Claimant, the Defendant denies the Claimant's claim of loss or damages as stated in the Statement of Claim or at all.
35. During the period April 2003 to December 2004, the Defendant was the Project Manager and Architect for the St. Clair Heights Development Project. The Defendant rendered services valued at EC\$122,400.00 in relation to this project.
36. To date claims the defendant, the Claimant has failed and/or neglected to pay the Defendant for the services rendered and the total amount of EC\$122,400.00 remains due and owing to the Defendant.
37. The defendant claims that in or about November, 2005 the Defendant granted a loan to the Claimant in the amount of EC\$35,810.90 to assist the Claimant Company in the resolution of cash flow difficulties. This loan included a payment of EC\$25,000.00 to the Claimant Company on the 4<sup>th</sup> day of November, 2005 as evidenced by the Royal Bank of Canada Cheque #0795 as attached and marked "AL1". The Defendant further paid EC\$10,810.90 on behalf of the Claimant Company to Ivor Burton, a sub-contractor as payment for services rendered to the Claimant Company on the St. Clair Court's project. A copy of Royal Bank of Canada Cheque #0796 and a copy of Ivor Burton's sub-contractor claim form are attached and marked "AL2" and "AL3" respectively.
38. The Claimant, he says, has failed and/or neglected to repay the loan to the Defendant and the amount EC\$ 35,810.90 remains due and owing to the Defendant.

### EVIDENCE<sup>3</sup>

Dorothy Gittens

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<sup>3</sup> This is a substantial reproduction of aspects of the evidence in chief of the witness for the Claimant.

39. She testified that following the 30<sup>th</sup> January, 2006, Judgment, a legitimately appointed Board of Directors of which she was a director, assumed control of the Claimant and immediately carried out due diligence of all the operations of the Claimant. Certain anomalies in transactions involving the Defendant were discovered and of which she became aware.
40. There was an arrangement in place between the Claimant and Developers Unlimited Limited involving certain lands known as St. Clair Heights. The said lands were registered in the name of Developers Unlimited Limited. According to the arrangement, purchasers of a plot in the Development would pay the purchaser price to the Claimant and upon such payment; Developers Unlimited Limited would transfer the land to the purchasers.
41. The claimant testifies further, that by letter dated 19<sup>th</sup> April, 2005 the Defendant in his alleged capacity of Chief Executive Officer informed Developers Unlimited Limited that he had paid for a plot of land, namely Parcel 667, and that the transfer documents should be prepared for him. It is the Claimant's position that the Defendant was using his alleged position to acquire the land. The Defendant sold the land to himself at a gross undervalue of \$12,000.00. In fact, said Mrs. Gittens that is sum stated in the transfer when in fact the Defendant paid \$6000.00 only<sup>4</sup>. She attached a copy of the receipt for payment of the said sum to her statement of claim. At that time the price for the plot of land was \$17,000.00. The Defendant, she says, was never entitled to discount the purchase price. The Claimant had no such discussions with the Defendant nor was any resolution passed to that effect. He was not the project manager nor the architect of the St. Clair Heights Development Project.
42. The evidence is that the said project began in 2003 and land sales and development began in 2004. In 2004, the claimant contends and testified to the Defendant as only having an unofficial managerial function with the Claimant. This fact was admitted by the Defendant in his report to the Claimant dated 15<sup>th</sup> March, 2005. The Defendant wrote the report which shows that the Defendant worked part time with the Claimant between the period 2003 and December 2004. That was an

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<sup>4</sup> The defendant does not dispute this payment.



arrangement that he had with the deceased. From December 2004 to January 2006 the Defendant was a full time employee with the Claimant and earned a monthly salary of \$10,000.00. The Defendant worked in the capacity of employee of the Claimant and was never worked as independent contractor nor subcontractor. The Claimant has never received any invoices for any work done by the Defendant.

43. The arrangement of which the claimant spoke earlier, also involved the construction of town Houses. Again according to the arrangement between the Claimant and Developers Unlimited Limited, the prospective purchaser, at the time of purchasing certain parcels of land, would enter into a contract with the Claimant for the construction of a town house. On the 28<sup>th</sup> July, 2005 the said Gloria Lake purporting to act on behalf of the Claimant signed a contract with the Defendant for the construction of a standard three-bedroom townhouse. The Defendant paid the sum of \$220,000.00 for the construction of the townhouse when the price was \$220,000.00. A copy of the receipt for payment of \$220,000.00 was exhibited in the matter
44. The claimant testified that in contravention of the said Court order the Defendant incurred liabilities and expenses. She exhibited a list all 'unjustified and authorized' expenses together with copies of the receipt for the same. Most of those expenses were personal to the deceased and not to the Claimant. All funeral expenses were paid by the estate of the deceased. The travel expenses listed relate to the Defendant's Voluntary move from Trinidad to Antigua and are not expenses for the Claimant. The Claimant never requested the Defendant to move to Antigua.
45. On numerous occasions, said the claimant, the Defendant purported to act on behalf of the Claimant. He made payments from the Claimant's bank account for repairs to and for utility charges in respect of the house in Paradise View which forms a part of the estate of the deceased. The Defendant also unlawfully and justifiably used the Claimant's bank accounts to pay for his personal travel and entertainment expenses, to transfer money to Mrs. Myrtle Looby and Ms. Rhonda Mohan, both of whom had no relationship with the Claimant and to make payment to three of his siblings, namely Saran Looby, Azizi Harris and Ashlee Thomas. The claimant exhibited copies of the receipts for the said expenses.

## EVIDENCE OF AKINDELE LOOBY<sup>5</sup>

46. He said that he is the son of George Looby, deceased, who died on December 7, 2004, intestate. I have five siblings, Akil Looby, Azizi Looby, Saran Looby, Thema Looby and Ria Ashlee Thomas. Dorothy Gittens, my father's widow is the Administratrix of the estate of George Looby, deceased and was granted letters of Administration on January 18, 2005.
47. Geotech Associates was founded by my father, George Looby and Leon Taylor in 1980 with offices in St. Augustine, Trinidad. My Father would eventually buy out Leon Taylor and later established an Office of Geotech Associates in Antigua in 1984. Geotech Associates was primarily engaged in civil construction and civil engineering. My father, he said, operated the business in Antigua as a sole proprietorship until about 2002 when the Company was formally incorporated as Geotech Company Limited (hereinafter referred to as "Geotech"). My father was the sole shareholder of the Company and one of two directors. Prior to my Father's death, the Directors of the Company were George Looby, (now deceased) and Ms. Gloria Lake who was also employed with the Company as the Office Manager. Ms. Lake had been employed as the Office Manager with Geotech since on or about 1987 and became a director in 2002 when the Company was formally incorporated.
48. I am a qualified project manager and architect and worked closely with my father at Geotech Company Limited prior to his death. I was employed with Geotech from about 1999 to January 2006. My father was grooming me to take over the business and as such allowed me to play a central role in the Company affairs. My responsibilities at Geotech steadily increased and by 2004, my father had entrusted me with a managerial function within the Company. I was responsible for modernizing operational and IT systems as well as expanding Geotech's services to include architecture and residential development. In particular my father placed me in charge of the St. Clair Heights Land Development Project.

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<sup>5</sup> This is a reproduction of aspects of the evidence in-chief of the Defendant.

49. In or about 2004, I became a signatory on Geotech's accounts, the only person apart from my father who had the authority to sign on my own. I was therefore authorized to make disbursements from the Company's accounts.
50. After the unexpected and sudden death of my father, George Looby In December, 2004, I believe that immediate steps needed to be taken to prevent chaos at Geotech and to preserve the continuity of the Company. At the time Gloria Lake was the sole surviving director of the Company. I obtained legal advice and based on this legal advice certain steps were taken to appoint me as director and CEO of the Company. A resolution dated December 10, 2004 was signed by Ms. Lake appointing me as director and chief executive Officer of the Company in place of George Looby, deceased.
51. Further steps were later taken to distribute the shares of Geotech to the various beneficiaries of the estate of George Looby, deceased. A resolution dated 23, 2005 was signed by Gloria Lake and I seeking to distribute the shares in the Company. At all times, I acted honestly and in good faith, and in reliance on the advice of my attorneys at the time.
52. In or about April, 2003, Geotech entered into a joint venture agreement with Developer Unlimited Limited for the Development of lands known as St. Clair Heights which were owned by Developers Unlimited Limited. At this time, I was employed with Geotech in a managerial position. My father appointed me as the project manager and architect of the St. Clair Heights Development Project. I played a central role in the development of this project from its inception. As project manager, I was responsible for the project concept, project development, sales and marketing. I was also the architect responsible for the design of the townhouse.
53. In or about, 2005, I decided to purchase a plot of land in the St. Clair Heights Development. By letter dated April 19, 2005 I instructed Developers Unlimited Limited to prepare an Instrument of Transfer in relation to the purchase of a parcel of land Registration Section: Bendals, Block:55 1888A, Parcel:667. I purchased this parcel of land for EC\$6,000.00. This sum represented the

actual costs of Land which would be paid to Developers Unlimited Limited at the above quoted price of EC\$2.00 per square foot.

54. At that time, the purchase price of the Land which was being quoted to prospective purchasers was EC\$17, 000.00. I therefore admit that I paid less than the purchase price as quoted to prospective purchasers. However, I believe that as an employee occupying a managerial position in Geotech and further as the Project Manager of the St. Clair Heights Development Project from inception, I was allowed to purchase the parcel of land at a discount and do not believe that I acted improperly in that regard.

55. I later agreed to pay EC\$220,000.00 for the construction of a townhouse on the parcel of land. At that time, the selling price which was quoted to prospective purchasers was EC\$268,000.00. This price included the construction costs along with real estate agent fees, The amount of EC\$220,000.00 represented the actual construction costs as estimated prior to the start of the construction.

56. It is my position that as an employee occupying a managerial position in the Claimant Company and further as the project manager of the St. Clair Heights Project from inception, I was allowed to enter into an agreement for the construction of the townhouse at the construction price.

57. In the Claim herein, the Claimant has represented a list of alleged "unauthorized and unjustified expenses" by Geotech Company Limited. It should be noted that the vast majority of the payments listed in the spread sheet pre-dated the June 2005 order as mentioned above.

58. In relation to the Claimant's claim for alleged "unauthorized and unjustified expenses", I note that Ms. Gittens who currently exercises control of the Company in her capacity as Administratrix of the estate of George Looby, deceased, sole shareholder of the Company had failed to include the various payments and benefits received by her from Geotech. Ms. Gittens' travel expenses in relation to my father' funeral were paid by Geotech. Geotech also paid for all the house expenses including the utility bills and maintenance costs for the house at Falmouth which was being

occupied by Ms. Gittens. In addition, the cell phone bills in relation to Ms. Gittens' Phone were paid by Geotech while my father was alive and continued to be paid by Geotech after my father's death.

59. Under the above circumstances, I believe that this lawsuit has been brought in bad faith as during the period in question, Ms. Gittens herself and benefited from disbursements from Geotech's account. It is disingenuous for Ms. Gittens to now use her control of Geotech to attempt to recoup Money from using the argument that the disbursements made by me were unauthorized and unjustified.
  
60. During the period April 2003 to December 2004, I acted as the Project Manager and Architect of the St. Clair Heights Development Project. I rendered services valued at EC\$122,400.00. I made a formal demand for payment for my services through my then attorney via letter dated December 9, 2006. To date, I have not been compensated for these services.
  
61. In or about November 2005, I granted a loan to Geotech in the amount of EC\$35,810.90 to assist Geotech in the resolution of cash flow difficulties. This loan included a payment of EC\$25,000.00 on November 4, 2005, as evidenced by the Royal Bank of Canada Cheque #0795, a copy of which is attached and marked "AL1".
  
62. The other aspect of the loan was as payment of EC\$10,810.90 on behalf of Geotech to Ivor Burton, a sub-contractor as payment for services rendered to Geotech on the St. Clair Heights Project. A copy of the Royal Bank of Canada Cheque #0796 and a copy of Ivor Burton's sub-contractor claim form are attached and marked "AL2" and "AL3" respectively.
  
63. To date, Geotech has failed to pay the amount due to me and the total amount of EC\$35,810.90 is still due and owing.

64. This was the evidence in chief of the defendant where he joined issue with the claimant. I believe the divergence in the cases for the respective parties are best brought out in the evidence chronicled above.

### CONCLUSION

65. This is a difficult matter. The parties have in part, thrown a bundle of documents at the feet of the court and said, there is the evidence, you work it out. What is this case about at its core? It is about the recovery of monies expended by a company under management that was subsequently declared as unlawfully appointed.

66. Many of the expenses then paid were, it is submitted by the defendant, ongoing disbursements and expenses incurred and put in place by the previous management – George Looby decd - over whose bona fides there is no issue. One of the significant benefits of a corporate entity is its perpetual existence. The death of a share holder does not bring to an end the legal status of the entity nor need it necessarily bring to an end the continued operation of the entity. I cannot hold responsible, the defendant, for the continuing standing orders of the company after the death of the sole share holder.

67. The defendant goes further to say that the company had a policy of making certain payments of a domestic and personal nature in the conduct of its business<sup>6</sup>. A company may choose on what it wants to spend its profits. That is a matter for the management and ultimately the shareholders. There is no evidence to contradict this evidence. The unjustifiable (if that is what it is) nature of the payments referred to by the claimant in her evidence as falling under this category of disbursements would not originally be attributable to the defendant, but to those who set the policy.

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<sup>6</sup> The defendant gave uncontested evidence of that continuing policy up to today in relation to present management of the company.

Further, the claimant contends that by virtue of the Consent Judgment Order, the actions of the defendant in making these disbursements is unlawful. If that is the argument, I do not agree. To give the Order an interpretation that effectively renders every action taken, no matter how mundane and routine, as void and invalid, is inconsistent with commercial logic and simply impractical. To the extent that the Order lends itself to more than one, perhaps even closely allied, interpretations, the interpretation more consistent with commercial and corporate logic is to be preferred in this case. The defendant's actions in allowing the existing standing order to continue and to continue the other payments the history of which predates the defendant's entry to the claimant company management does not fall to be prohibited by the said court Order, save where it involves entering into contractual relations.

68. The defendant admits to the outstanding arrears in the loan to him. This he will pay to the claimant in the sum of EC\$4,762.00.

69. It is convenient to deal with the defendant's loan to the defendant now. The documentary evidence relied on by the defendant is in my view not inescapably referable to the loan claimed by the defendant. Apart from this shortcoming, the defendant's indebtedness to the claimant belies the defendant's capacity to extend a loan to the company. However, the claimant other than merely denying the loan has not led any evidence contrary to that of the defendant. The defendant's account of the evolution of the loan contains detail suggestive of a real transaction. In the balance I find for the defendant on the existence of the loan against the claimant in the sum of EC\$35,810.90<sup>7</sup>.

70. The claim for legal fees is substantially met by the counsel for the defendant in her written submissions. In addition, I find this aspect of the claim as explained by the witness somewhat

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<sup>7</sup> See para. 40 and 41 of the defendant's witness statement for the breakdown of this sum into two its parts. See also his oral testimony.

garbled and insufficiently detailed to satisfy the civil standard of proof. I am unable to attribute the claimed "loss" to the actions of the defendant<sup>8</sup>.

71. As to the claim for an Order that the defendant give an undertaking to indemnify the claimant against any future claims arising out of his unlawful tenure as CEO of the claimant; I am unable to accede to that claim. First, the defendant's tenure terminated in January 2006, some four and a half years ago. The Statute of limitation periods on many a cause of action will have taken effect by now. Shortly, the time within which just about all potential actions may be brought against the claimant would have expired. Further still, It is open to the claimant to join the defendant in any matter brought against the claimant that the defendant is answerable for.

72. Finally, the claimant has claimed against the defendant for the repayment of the gains made when he allowed himself concessionary rates for the purchase of land in the St. Clair Heights Development and also for the concessionary rate for actual construction of the building thereupon. This development was done as a joint enterprise with another corporate entity. The upshot of the evidence of the claimant, and it has not been shaken by the defendant, is that both 'concessions' as it were, required Board and contractual considerations, neither of which survived the Consent Summary Judgment. Further, the entitlement of the defendant to such a concession is questioned by the claimant. The Defendant claims to have been entitled to concessions as a project manager on the project. However, the cumulative effect of the documentary evidence, including the "report" referred to in the evidence and exhibited in the Trial Bundle, do not support his claim. The evidence of the claimant is that the defendant paid EC\$6000.00 for the EC\$17,000.00 parcel of land and paid EC\$220,000.00 for the construction of a EC\$268,000.00 home. The cumulative under-payment from my calculation is EC\$59,000.00. I accept the liability of the defendant on this aspect of the claim.

73. The defendant claims in the alternative; that he is owed some \$122,400.00 for his Project Management and Architectural services rendered to the St. Clair Heights project. There is no

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<sup>8</sup> See also the submissions of counsel for the defendant on this point. The court adopts the reasoning also.



documentary evidence to support this claim. This is coupled with the claimant testimony that the records show that the defendant worked for a salary alone of some EC\$10,000.00 a month and not as an independent contractor or otherwise. This claim has been introduced in the statement of case for the defendant almost like an ancillary tack-on and not, as I would expect of such a significant claim, as the foundation of the defense and counterclaim. I accept the evidence of the claimant on this point. There is insufficient support for this counterclaim. The claimant's evidence is more robust, definitive and consistent on this point than that of the defendant.

### ORDER

74. For the reasons provided above, IT IS HEREBY ORDERED AS FOLLOWS:

- i. That there is Judgment for the Claimant in the sum of EC\$59,000.00 on the St Clair Heights concessions<sup>9</sup>;
- ii. That there is Judgment for the claimant in the further sum of EC\$ 4,762.00 being the admitted outstanding loan balance due from the defendant to the claimant<sup>10</sup>;
- iii. That there is Judgment for the defendant/counterclaimant in the sum of EC\$35,810.90 being the balance of the loan made to the claimant by the defendant<sup>11</sup>;
- iv. That the Supreme Court Act interest payable on each of the judgment sums at 5% per annum from January 2005 on all sums;
- v. That Costs are payable to each successful party on the Prescribed Cost scale.



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DAVID C HARRIS  
HIGH COURT JUDGE  
ANTIGUA and BARBUDA

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<sup>9</sup> See paragraph 47 above.

<sup>10</sup> See para 43 above.

<sup>11</sup> See para. 37 and 43 above