EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

COMMONWEALTH OF DOMINICA

DOMHCVAP2013/0007

BETWEEN:

MARIETTE WARRINGTON

Appellant

and

DOMINICA BROADCASTING CORPORATION

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste — Justice of Appeal
The Hon. Mr. Mario Michel — Justice of Appeal
The Hon. Mde. Gertel Thom — Justice of Appeal

Appearances:

Mr. David Bruney, with him Ms. Cara Shillingford for the Appellant
Mr. Alick Lawrence, SC, with him Ms. Rose-Ann Charles for the Respondent

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2014: November 11;
2015: September 15.

Civil appeal – Contract – Breach of contract – Termination of contract of employment – Wrongful dismissal – Whether there was implied contract between appellant and respondent – Whether Board of respondent was advised by Prime Minister that appellant should be reappointed pursuant to s. 6(6) of the Dominica Broadcasting Corporation Act – Appeal against findings of fact made by learned trial judge

The appellant had been employed with the respondent on contract as Manager of its radio broadcasting services department for a total of 8 years. During that period, she had two consecutive contracts of employment with the respondent – the first lasted for 3 years, ending on 31st December 2003 and the second, for a period of 5 years, ending on 31st December 2008. Pursuant to clause 9 of the second contract, which was dated 1st January 2004 ("the 2004 contract"), the

appellant was required to notify the respondent 6 months prior to the expiration of the contract if she was desirous of being reemployed by the respondent. The appellant, by letter dated 25th June 2008, duly wrote to the respondent indicating her desire to be reappointed. The matter was considered by the respondent's Broadcasting Board ("the Board") on 24th July 2008, but no response was sent by the respondent. Instead, the appellant was instructed to advertise the post of Manager, for which she submitted an application. The respondent did not respond to her application. The issue of the appointment of a Manager was discussed at several subsequent meetings of the Board. However, the situation remained the same until the expiration of the 2004 contract, after which point in time the appellant continued to perform the functions of Manager and received the same salary and other benefits as under the 2004 contract. By letter dated 14th April 2010, some 16 months after the expiration of the 2004 contract, the respondent terminated the appellant's employment and paid her remuneration for the month of April 2010.

Thereafter, the appellant instituted proceedings for damages for 'breach of agreement/wrongful dismissal'. She alleged that after the expiration of the 2004 contract, there was an implied contract between her and the respondent, on the same terms as the 2004 contract. Since clause 6 of the 2004 contract provided for termination by the respondent on giving her 6 months' notice or the payment of 6 months' salary in lieu of notice, along with benefits, including loss of salary, gratuity and leave entitlement, she argued that she was entitled to the sum of $280,100.00 in addition to interest, general damages and costs. The respondent defended the claim, denying that the appellant was entitled to 6 months' salary in lieu of notice and the other benefits claimed. The respondent argued that after the expiration of the 2004 contract, the appellant worked on a month to month basis. The respondent also counterclaimed for a sum of $70,553.39, which it contended the appellant had owed it.

The learned trial judge dismissed the appellant's claim, on the basis that, the 2004 contract having expired in 2008, pursuant to section 6(6) of the Dominica Broadcasting Corporation Act,[1] the Board had no legal authority to enter into a new contract with the appellant without the advice of the Prime Minister. Section 6(6) states that: 'The Board acting on the advice of the Prime Minister shall appoint … two Managers one for radio broadcasting services and the other for television broadcasting services'. The learned trial judge accordingly held that the court could not imply that a new contract was entered into between the appellant and the respondent and consequently no issue of breach of contract arose. With regard to the respondent's counterclaim, at trial, the appellant admitted that she owed the respondent a total of $61,299.75 and this sum was awarded to the respondent.

The appellant appealed the learned trial judge's decision on the claim, contending that he had failed to properly analyse the evidence which showed that there was

[1] Chap. 45:06, Revised Laws of Dominica 1990.

an implied contract and that the respondent had failed to prove that the advice of the Prime Minister had not been given during the 16 months of her employment following the expiry of the 2004 agreement. The respondent contended that the learned judge had rightly found that there was no implied contract on the terms of the 2004 contract, since that was the inevitable conclusion when all the evidence relating to this issue was considered. The evidence relied on by the parties consisted of several minutes of the Board which were not in dispute, letters written by the appellant to the respondent in relation to her appointment, certain paragraphs of the appellant's witness statement and admissions made under cross-examination as shown on the transcript. The appellant also argued on appeal that pursuant to section 47 of the Interpretation and General Clauses Act,[2] the Prime Minister having advised in 2000 that the appellant be appointed Manager, no further advice of the Prime Minister was required pursuant to section 6(6). The appellant further argued that the Labour Contracts Act[3] mandates that every employee, save those exempted by the Act, must be employed under a labour contract and therefore, the fact that she had worked as Manager for 16 months after the expiration of the 2004 contract meant that there was an implied contract of employment.

Held: dismissing the appeal and ordering that the costs of this appeal be assessed if not agreed within 21 days, that:

1. A court will imply a contract based on the conduct of the parties where the implication of a mutual agreement is a reasonable deduction from all of the circumstances and the relation of the parties. All of the surrounding circumstances must be considered – a court does not merely assume that a contract exists. Generally, a court may imply a contract where the parties enter into a fixed term contract and at the expiration of the contract they continue to act as though the contract was still binding. In such a case, the onus of proof would be on the party asserting that there is an implied contract.

   Baird Textile Holdings Limited v Marks & Spencer Plc [2001] EWCA Civ 274 applied; **Diane Modahl v British Athletic Federation** [2001] EWCA Civ 1447 applied.

2. When an appeal is made against a trial judge's finding of fact, an appellate court should only interfere with the judge's finding in limited circumstances. Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular, the extent to which he or she had, as the trial judge, an advantage over the appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere. Some conclusions of fact are, however, not conclusions of primary fact, but involve an assessment of a

[2] Chap. 3:01, Revised Laws of Dominica 1990.
[3] Chap. 89:04, Revised Laws of Dominica 1990.

number of different factors which have to be weighed against each other. In the present case, the learned trial judge, in his written judgment, did not carry out an analysis of the evidence that was before him in coming to a conclusion on the issue of whether there was an implied contract between the parties. Having regard, however, to the nature of the evidence that was relied on by the parties, this Court is in as good a position as the learned trial judge to make a determination on this issue.

In re B (A Child) (Care proceedings: Threshold Criteria) [2013] 1 WLR 1911 applied; **Central Bank of Ecuador and Others v Conticorp SA and Others** [2015] UKPC 11 applied.

3. From the time the appellant expressed her desire to be reappointed as Manager, the Board, while in agreement that she be reappointed as Manager of the respondent and subsequently either as Manager or accountant, was aware that the Prime Minister's advice had to be obtained before the position of Manager could be filled, pursuant to section 6(6) of the **Dominica Broadcasting Corporation Act**. The appellant knew that the respondent was in favour of her appointment but she was also aware that the Prime Minister's advice had not been obtained. In these circumstances, the conduct of the parties does not give rise to implying a fixed term contract as contended by the appellant. The effect of the failure of the respondent to get the advice of the Prime Minister meant that any agreement the respondent entered into for the appointment of a Manager would be void and unenforceable. The appellant was therefore only entitled to be paid for the services rendered.

4. When the court is called upon to interpret a legislative provision that is clear and unambiguous, it must give the wording of the provision its plain and natural meaning. Section 6(6) of the **Dominica Broadcasting Corporation Act** is one such clear and unambiguous provision. There is therefore no need to correct any drafting errors or add, omit or substitute words in the section. The phrase 'acting on the advice of the Prime Minister' means just what it says. The Board is required to obtain the advice of the Prime Minister before anyone is appointed a Manager and when that advice is received the Board is required to act in accordance with it. The Act does not permit the Board to appoint a person of its own choice without first seeking the advice of the Prime Minister; the respondent could only enter into a contract of employment with a person in relation to the office of Manager where the Prime Minister had given his advice that such person is to be appointed Manager.

5. The onus was on the respondent to prove that the advice of the Prime Minister was not obtained. However, in view of the evidence that was before the learned judge, it was open to him to find that on a balance of probabilities, the Prime Minister had not given advice to the respondent on the appointment of a Manager.

British Guiana Credit Corporation v Clement Hugh Da Silva [1965] 1 WLR 248 distinguished.

6. Section 47 of the **Interpretation and General Clauses Act** makes it very clear that where the power granted by statute is to be exercised on certain conditions, whenever a power is to be exercised, those conditions have to be met. The appellant having been appointed for a fixed period, and that period having expired, the Board would have to exercise its powers under section 6(6) of the **Dominica Broadcasting Corporation Act** to appoint the appellant for a further period on terms and conditions agreed. In the exercise of this power, the respondent must act in accordance with the provisions of the Act which requires the Board to exercise its power on the advice of the Prime Minister. The fact that the Prime Minister's advice may not have been given in relation to the 2004 contract is of no moment. Such conduct cannot trump the clear provision of the Act which stipulates that the Board must act on the advice of the Prime Minister in appointing a Manager.

7. Generally, where specific legislative provisions are made to govern a matter, then the general provisions are not applicable. The **Dominica Broadcasting Corporation Act** makes specific provision for the appointment of a Manager. The Board, in appointing a Manager, must act in accordance with the advice of the Prime Minister. The general provisions of the **Labour Contracts Act** cannot supersede the specific provisions of the **Dominica Broadcasting Corporation Act**. To imply a contract pursuant to the **Labour Contracts Act** where the express provisions of the **Dominica Broadcasting Corporation Act** have not been complied with would indeed render the provisions of the latter Act nugatory. Accordingly, the **Labour Contracts Act** does not apply in the present case.

JUDGMENT

[1] **THOM JA**: The appellant was first employed by the respondent as Manager of its Radio Services Department on contract for a period of 3 years which ended on 31st December 2003. She was then reemployed on contract for 5 years ending 31st December 2008. The terms of the contract were outlined in a written contract dated 1st January 2004 ("the 2004 contract"). Pursuant to clause 9 of the 2004 contract,[4] the appellant

[4] Clause 9 of the 2004 contract was in the following terms:

> "9 Not less than six months prior to the completion of the term of engagement the Person Engaged shall give notice in writing to the Corporation whether she desires to enter into a new service agreement with the Corporation and the Corporation shall thereupon decide whether it will offer her further employment. If the Corporation offers her further employment the re-engagement will b eon [sic] such terms and for such periods as may be mutually agreed."

was required to notify the respondent 6 months prior to the expiration of the contract if she was desirous of being reemployed by the respondent. By letter dated 25th June 2008, the appellant wrote to the respondent indicating her desire of being reappointed. The matter was considered by the Board[5] on 24th July 2008. The minutes of the Board meeting of 24th July 2008 in relation the reappointment of the appellant, which were confirmed on 7th August 2008, read as follows:

> "**Re-appointment of General Manager**
>
> The Board of Directors unanimously agreed to the reappointment of Miss Mariette Warrington to the position of General Manager."

[2] The respondent did not respond to the appellant's letter requesting reappointment, instead it caused the appellant to advertise the post of Manager. The appellant duly applied for the post of Manager. The respondent did not respond to her application. The issue of the appointment of a Manager was discussed at several meetings of the Board thereafter. At the expiration of the contract on 31st December 2008, the appellant continued to perform the functions of Manager and she received the same salary and other benefits as under the 2004 contract.

[3] In April 2009, a new Board was appointed and that Board also discussed the issue of the appointment of a Manager at several of its meetings.

[4] By letter dated 14th April 2010, the respondent terminated the appellant's employment and paid her remuneration for the month of April 2010. Thereafter, the appellant instituted proceedings for damages for breach of agreement/wrongful dismissal. She alleged that after the expiration of the 2004 contract, there was an implied contract between herself and the respondent on the same terms as the 2004 contract. Since clause 6 of the 2004 contract provides for termination by the respondent on giving her 6 months' notice or the payment of 6 months' salary in lieu of notice, along with other benefits, including loss of salary, gratuity and leave entitlement, she was entitled to the sum of $280,100.00 in addition to interest, general damages and costs.

[5] The respondent, in its defence denied that the appellant was entitled to 6 months' salary in lieu of notice and the other benefits claimed. The respondent contended that after the expiration of the 2004 contract, the appellant worked on a month to month basis. The respondent also counterclaimed for a sum of $70,553.39 being sums due and owing to it.

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[5] "The Board" referred to here is the Broadcasting Board established under s. 4 of the Dominica Broadcasting Corporation Act (Chap. 45:06, Revised Laws of Dominica 1990).

At the trial, the appellant admitted she owed the respondent a total of $61,299.75. This sum was awarded to the respondent. There is no appeal in relation to the counterclaim.

[6] The learned judge dismissed the appellant's claim. His reasons for doing so were that the 2004 contract having expired in 2008, pursuant to section 6(6) of the **Dominica Broadcasting Corporation Act**,[6] the Board had no legal authority to enter into a new contract with the appellant without the advice of the Prime Minister. Therefore the court could not imply that a new contract was entered into between the appellant and the respondent and consequently no issue of breach of contract arose.

[7] The appellant appealed the decision of the learned judge on the following grounds:

1. The learned judge failed to consider that the defendant corporation had utilised the terms of the employment agreement of 2004 as the regulatory authority for the continuation of the claimant's employment after its expiry for a period of 16 months.

2. The learned judge failed to consider that the defendant corporation had failed to utilise the terms of the said 2004 agreement when summarily dismissing the claimant.

3. That the learned judge failed to consider the conduct of the officers of the defendant company and the Prime Minister in relation to the supervision of the claimant's employment following the expiry of the employment agreement of 2004 when concluding that the advice of the Prime Minister had not been given during the 16 months of her employment following such expiry.
4. The learned judge erred in concluding that the advice of the Prime Minister had not been given during the said 16 months of employment following the expiry of the 2004 agreement.

5. The learned judge erred in concluding that the Board had not agreed with the claimant for the award of a new implied agreement to the claimant and to conclude that such appointment was thus void and of no legal effect.

6. The learned judge failed to consider the cumulative conduct of the officers of the defendant corporation and the Prime Minister when negating the existence of an employment agreement in favour of the claimant.

[8] Three issues arise from the above grounds being:

[6] Chap. 45:06, Revised Laws of Dominica 1990.

A. Whether there was an implied contract between the appellant and the respondent.
B. Whether the Prime Minister had advised the respondent in relation to the reappointment of the appellant.
C. If there was a valid contract, whether the respondent was in breach of the contract in failing to pay the appellant 6 months' salary in lieu of 6 months' notice and the other benefits claimed by the appellant when terminating the contract.

Implied Contract

[9] I will deal with issues A and B together.

[10] The appellant's argument is three-fold: (i) The learned judge failed to properly analyse the evidence which showed that the there was an implied contract and the respondent had failed to prove that the Prime Minister's advice was not obtained; (ii) pursuant to section 47 of the **Interpretation and General Clauses Act**[7] ("the Interpretation Act") the Prime Minister having advised in 2000 that the appellant be appointed Manager, no further advice of the Prime Minister was required pursuant to section 6(6) of the **Dominica Broadcasting Corporation Act**; (iii) the **Labour Contracts Act**[8] mandates that every employee, save those exempted by the Act, must be employed under a labour contract.

[11] In support of her contention that there was an implied contract between the parties, the appellant argued that the evidence led at the trial showed that her offer which was contained in her letter to the Board dated 25th June 2008 was accepted by the respondent at its board meeting on 24th July 2008. The Chairman of the respondent communicated this decision to her.

[12] The appellant relied on the following conduct as the basis for the Court to imply a contract between the parties:

(a) The appellant was permitted to continue to work as General Manager for 16 months after the contract had expired.

(b) The respondent, through its officers, acted under the terms of the 2004 contract.

(c) The decision of the respondent to grant her leave from 12th December 2008 to 11th January 2009 a period beyond the contractual period notwithstanding the provisions of clause 8(ii) and (iii) of the 2004 contract, which provides for payment of salary in lieu of leave.

[7] Chap. 3:01, Revised Laws of Dominica 1990.
[8] Chap. 89:04, Revised Laws of Dominica 1990.

Since salary was not paid in lieu of leave, the inference to be drawn is that the contract was renewed.

[13] The appellant further contends that the onus was on the respondent to show that the Board did not receive the advice of the Prime Minister before accepting her offer. The respondent led no such evidence. In the absence of such evidence the learned judge was required to presume that the advice of the Prime Minister was given and the respondent acted intra vires the provisions of the **Dominica Broacdasting Corporation Act**. The appellant relied on the following statement of Lord Donovan in the case of **British Guiana Credit Corporation v Clement Hugh Da Silva**:[9]

> "The defendant corporation now argues that there was no proof that the Governor in Council had ever approved this merging of the salary and gratuity so that the whole became salary. The answer to the argument is that it was for the corporation to prove the absence of such approval. The corporation had raised the matter by way of defence and it was for them to establish it. All it did, however, was to call the acting chief accountant, who in 1960 was a grade A clerk, whose evidence was inconclusive and who admitted that others would be better acquainted with what happened in 1960 than he was."

[14] The appellant argues that the **British Guiana** case was similar to the extant appeal in that the evidence of the respondent's sole witness, Mr. Jolly, fell short of proving that the Prime Minister's advice was not given. The appellant referred to several excerpts of the cross-examination of Mr. Jolly where he admitted that he was not the Chairman of the Board on 24th July 2008 when the Board agreed to accept the offer of the appellant. He also admitted that he was not privy to communication between the Prime Minister and the Board since he was not the Chairman.

[15] The respondent submits in response, that the circumstances relied on by the appellant to imply a contract of employment amounted only to an expectation of a contract or alternatively, the appellant was working pursuant to a void contract and as a result the appellant was only entitled to be paid for her work on a quantum meruit basis. In support of this proposition, the respondent cited the cases of **William Lacey (Hounslow) Ltd. v Davis**[10] and **Craven-Ellis v Canons, Limited**[11] and **Chitty on Contracts**.[12]

[16] The respondent further submits that the appellant was aware that no agreement was reached in relation to her reappointment. In support of

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[9] [1965] 1 WLR 248 at 258.
[10] [1957] 1 WLR 932.
[11] [1936] 2 KB 403 at 410.
[12] Hugh Beale, Chitty on Contracts (31st edn., Sweet & Maxwell 2012) vol. 1 paras. 29-076 and 29-081.

this contention, Mr. Lawrence, SC referred to the following: (i) the appellant's letter of 14th January 2009, in which she sought a response from the respondent to her letter of 25th June 2008 in which she offered her services as Manager of the respondent; (ii) paragraphs 6 and 7 of the appellant's witness statement where she stated that in August 2008 she was requested by the Chairman to advertise the post of Manager and that in response to the advertisement she applied for the post of Manager but she never received a response from the respondent; and (iii) paragraph 12 where the appellant also acknowledged that she received no reply to her letters to the Board in relation to the renewal of her contract.

[17] While Mr. Lawrence, SC acknowledged that the respondent had on 24th July 2008 at its meeting agreed to the appointment of the appellant as Manager, he referred to a number of excerpts from the minutes of the respondent where it discussed the appointment of a Manager and stated that the respondent supported the appellant, was in favour of the renewal of her contract, and had recommended that she be appointed in the position. These excerpts, Mr. Lawrence, SC argues, show that the Board was in favour of the appellant being reappointed to the post of Manager, but the Board was always aware, as is shown in the minutes, that the advice of the Prime Minister was required.

[18] Mr. Lawrence, SC also referred to the transcript of the cross-examination of the appellant where the appellant in effect agreed that she knew that the Board's decision was a mere recommendation. She also knew the Prime Minister's advice was required and that the Prime Minister had not yet given his advice.

[19] Mr. Lawrence, SC further submits that the wording of section 6(6) of the Act is very clear. The effect of the provision is that the advice of the Prime Minister must be obtained before the appointment could be made. Failure to do so would mean that the respondent's action was ultra vires. The respondent relied on the following passage in Wade & Forsyth's **Administrative Law**,[13] which was referred to in the judgment of the court below:

> "Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because in order to be valid it needs statutory authorisation, and if it is not within the powers given by the Act, it has no legal leg to stand on. Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened."

[20] Mr Lawrence, SC further submits that the **British Guiana** case is distinguishable from the extant appeal in that in the **British Guiana** case, approval was required of the salary. Once the approval was given the

[13] Sir William Wade & Christopher Forsyth, Administrative Law (8th edn., Oxford University Press 2000) p. 36.

salary remained until it was altered no matter who the office holder was. In the extant appeal what is required is the approval of the person. Senior Counsel further submits that the respondent led evidence through its witness Mr. Jolly which proved that the Prime Minister did not advise that the appellant be appointed as Manager. This evidence was accepted by the learned judge.

Discussion

[21] A court will imply a contract based on the conduct of the parties where the implication of a mutual agreement is a reasonable deduction from all of the circumstances and the relation of the parties. A court does not merely assume that a contract exists, it must consider all of the surrounding circumstances to determine whether or not the contract can properly be implied.[14]. Generally a court may imply a contract where the parties enter into a fixed term contract and at the expiration of the contract they continue to act as though the contract was still binding. The onus of proof is on the party asserting there is an implied contract.

[22] There is no dispute of the facts (outlined in paragraph 12 above) on which the appellant relied to show that there was an implied contract save for the testimony of Mr. Joel Joseph where he testified that the Board had received the advice of the Prime Minister at a meeting on 17th February 2009. Rather, the gravamen of the respondent's contention is that there was other evidence relevant to the issue and when all of the evidence is considered the inevitable conclusion is that there was no implied contract on the terms of the 2004 contract.

[23] Where an appeal is made against a judge's findings of fact, it is a well-established principle that an appellate court would only in limited circumstances interfere with a trial judge's findings. Lord Neuberger of Abbotsbury PSC in **In re B (A Child) (Care proceedings: Threshold Criteria)**[15] explained the rule as follows:

> "[T]his is traditionally and rightly explained by reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as

[14] See Baird Textile Holdings Limited v Marks & Spencer Plc [2001] EWCA Civ 274 and Diane Modahl v British Athletic Federation [2001] EWCA Civ 1447.
[15] [2013] 1 WLR 1911 at para. 53.

a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first)."

[24] More recently in **Central Bank of Ecuador and Others v Conticorp SA and Others**[16] Lord Mance stated:

> "[A]ny appeal court must be extremely cautious about upsetting a conclusion of primary fact. Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular the extent to which, he or she had, as the trial judge, an advantage over any appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere. Some conclusions of fact are, however, not conclusions of primary fact, but involve an assessment of a number of different factors which have to be weighed against each other. This is sometimes called an evaluation of the facts and is often a matter of degree upon which different judges can legitimately differ: see Assicurazioni Generali SpA v Arab Insurance Group (Practice Note) [2003] 1 WLR 577, paras 15-17, per Clarke LJ, cited with approval in Datec Electronics Holdings Ltd v United Parcels Service Ltd [2007] UKHL 23, [2007] 1 WLR 1325, para 46."

[25] The learned trial judge did not analyse the evidence in his judgment. The evidence relied on by the parties consists of several minutes of the Board which were not in dispute, letters written by the appellant to the respondent in relation to her appointment, certain paragraphs of the appellant's witness statement and admissions made under cross-examination as shown in the transcript. In view of the nature of the evidence relied on, the appellate court is in as good a position as the learned trial judge to determine whether there was an implied contract.

[26] The minutes of the Board meeting show that the issue of the appointment of the appellant was discussed at several meetings of the Board after the initial discussion on 24th July 2008. The Board never communicated this decision to the appellant, nor did it direct the Chairman or anyone to communicate the decision to the appellant. The appellant became aware of the decision as she served as the secretary of the Board on that day. The appellant in her testimony agreed that no decision was made by the Board to enter into a new contract with her. She was aware that the advice of the Prime Minister had to be obtained. The appellant also stated in her witness statement that at the end of her vacation leave at the expiration of her contract, the Chairman informed her that the issue of a

[16] [2015] UKPC 11 at paras. 5-6.

new contract was not resolved therefore she should not report for duty the next day. Indeed the appellant in her letter dated 14th January 2009 (2 weeks after the 2004 contract had expired) wrote to the Board enquiring about her appointment. In paragraph 3 she wrote:

> "Since the board meeting of August 12, 2008 confirming the Boards [sic] decision of July 24, 2008, but for the unofficial comments you occasionally make to me with respect to my employment with the corporation, to date, I have not been officially informed of my employment status with the Corporation."

[27] The minutes of the Board show that just over 2 weeks after the meeting of 24th July 2008, on 11th August 2008, the Manager was instructed to advertise the post of Manager. The appellant applied for the post. She admitted in her witness statement that she did not receive a response from the Board to her application for the post.

[28] The minutes also show that the Board sought to get the Minister of Information to get the advice of the Prime Minister on the filling of the post. The Board also on two occasions appointed a sub-committee to meet with the Prime Minister, however, the first subcommittee in January 2009, met with the Minister of Information not the Prime Minister, and the Minister of Information agreed to get the advice of the Prime Minister for a two year contract or a contract for six months. Further, the minutes show that Mr. Joel Joseph, a director of the respondent and a witness for the appellant, reported to the Board that in the meeting with the Prime Minister, the Prime Minister intimated that the Board had not communicated with him on the matter of the appointment of a Manager.

[29] The circumstances reveal that ever since the appellant expressed her desire to be reappointed as Manager with two amendments to the terms of the contract, the Board, while in agreement that the appellant be reappointed as Manager of the respondent and subsequently either as Manager or accountant, was aware that the Prime Minister's advice had to be obtained before the position of Manager could be filled. The Board had several discussions on the issue almost at every meeting of the Board during the period July 2008 to April 2010. They sought a legal opinion, had a meeting with the Minister of Information to discuss the matter. The appellant knew that the respondent was in favour of her appointment and she was also aware that the Prime Minister's advice was not obtained. In these circumstances, the conduct of the parties does not give rise to implying a fixed term contract as contended by the appellant. The onus was on the appellant to show that it was necessary for her to have a fixed term contract to give business reality to the relationship of employer and

employee of the respondent and herself.[17] I am of the opinion that no such necessity was shown by the appellant.

[30] More importantly, the respondent being a statutory corporation, it is a well-established principle of law that its powers are circumscribed by the provisions of the statute. The relevant provision is section 6(6) of the Act. The section reads as follows:

> "(6) The Board acting on the advice of the Prime Minister shall appoint –
>
> (a) a Director of Broadcasting who shall undertake the general supervision of the broadcasting and information services of the State, and such other duties as the Prime Minister may from time to time assign him;
>
> (b) two Managers one for radio broadcasting services and the other for television broadcasting services;
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> (c) a Secretary; and
>
> (d) with the approval of the Minister, such other officers and persons as may from time to time be required with such terms and conditions of service and remuneration as may be determined."

[31] The general rule is that in interpreting a statute the court must consider the purpose for which the legislation was enacted. In **R (On the Application of Quintavalle) v Secretary of State for Health**[18] Lord Bingham of Cornhill stated this principle in the following manner:

> "The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. … The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

[32] More recently, Lord Nicholls of Birkenhead stated the principle in **Inco Europe Ltd and Others v First Choice Distribution (a firm) and Others**[19] which was applied by this court in **Caribbean Commercial Bank (Anguilla) Limited v Starry Benjamin**:[20]

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[17] See: Baird Textile Holdings Limited v Marks & Spencer Plc. [2001] EWCA Civ 274 and Diane Modahl v British Athletic Federation [2001] EWCA Civ 1447.
[18] [2003] UKHL 13 at para. 8.
[19] [2000] 2 All ER 109 at 115.
[20] AXAHCVAP2014/0009 (delivered 23rd July 2015, unreported) at para. 6.

"It has long been established that the role of the courts in construing legislation is not confined to resolving ambiguities in statutory language. The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative function the court will add words, or omit words or substitute words. Some notable instances are given in Professor Sir Rupert Cross' admirable opuscule, *Statutory Interpretation* (3rd edn, 1995) pp 93-105. He comments (p 103):

> 'In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role.'

This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation (see per Lord Diplock in Jones v Wrotham Park Settled Estates [1979] 1 All ER 286 at 289, [1980] AC 74 at 105-106)."

[33] The **Dominica Broadcasting Corporation Act** established the respondent as a statutory corporation managed by a Board and outlined its functions which include the provision of television and radio broadcasting services. The members of the Board are all to be appointed by the Minister responsible for Broadcasting services. Section 6(6) deals with the appointment of the various personnel to enable the respondent to perform its functions. In section 6(6) the legislature provided two ways for the appointment of the staff, one method for senior staff and another for the other members of staff. The senior members of staff being the Director of Broadcasting, the Manager for radio broadcasting services, the Manager for television broadcasting services, and the Secretary of the Corporation. These senior staff members are all to be appointed by the

Board on the advice of the Prime Minister. The other members of staff are to be appointed by the Board with the approval of the Minister.

[34] When the court is called upon to interpret a legislative provision that is clear and unambiguous, the court must give the wording of the provision its plain and natural meaning. Section 6(6) is one such provision, it is clear and unambiguous. There is therefore no need to correct any drafting errors or add, omit or substitute words in the section. The phrase 'acting on the advice of the Prime Minister' means just what it says. The Board is required to obtain the advice of the Prime Minister before anyone is appointed a Manager and when that advice is received the Board is required to act in accordance with it. The Act does not permit the Board to appoint a person of its own choice without first seeking the advice of the Prime Minister. In other words the respondent could only enter into a contract of employment with a person in relation to the office of Manager where the Prime Minister has given his advice that such person is to be appointed Manager.

[35] The appellant placed much reliance on the **British Guiana** case in support of her contention that the respondent had not proved that the Prime Minister's advice was not obtained. In the **British Guiana** case, the appellant corporation by advertisement invited applications for the post of General Manager. The respondent who was then Deputy Financial Secretary of the Government and an official member of the Board of the appellant, applied for the post. At a meeting of the appellant Board, the respondent was selected from among other applicants to fill the post. The appellant instructed its Secretary to notify the respondent that he was accepted for the post. The Secretary duly complied by letter to the respondent dated 26th September 1960. Subsequently the appellant reconsidered the matter and appointed another applicant to the post. The respondent instituted proceedings for breach of contract. The appellant contended among other things that there was no concluded contract of service and if there was a contract of service it was ultra vires the corporation since the agreed salary of $11,280.00 was in excess of $4,800.00 and the prior approval of the Governor in Council was not received pursuant to the proviso to section 6(1) of the British Guiana Credit Corporation Ordinance.

[36] The Privy Council found that there was a contract since the respondent's offer was accepted by the appellant and the acceptance communicated on the instruction of the appellant by the Secretary in the letter of 26th September 1960. The Privy Council further found that the onus was on the appellant to prove that the approval of the Governor in Council was not obtained. On the evidence they found the appellant had failed to do so. The Privy Council further found that under section 6(1) approval was required for salary in excess of $4,800.00 to be paid to the post, not the salary to be paid to each individual holder of the post. Thus once the

salary in excess of $4,800.00 is assigned to the post with the approval of the Governor in Council further approval is not required for a subsequent incumbent to be paid the same salary.

[37] The **British Guiana** case is distinguishable from the present appeal in that the legislative provisions are different. In the present appeal the legislation requires that the appellant acts in accordance with the advice of the Prime Minister when appointing the person. This means on each occasion where a Manager is to be appointed, the Board must act in accordance with the advice of the Prime Minister. This will become more apparent when the provisions of section 47 of the **Interpretation Act** are considered below. In my opinion this case does not assist the appellant.

[38] I agree with the submission of the appellant that the onus was on the respondent to prove that the advice of the Prime Minister was not obtained. The judgment of the court below is a very short one. At paragraph 5 of the judgment the learned judge dealt with the matter in the follow manner:

> "At the trial evidence was given by a former board member, Joel Joseph. He says that the board received the advice of the Prime Minister at the meeting with the board on 17th February 2009. Mr. Joseph's evidence does not accord with the minutes of the board meeting. Another board member Mr. Aurelius Jolly gave evidence that the Prime Minister merely said he would await formal communication on the matter. No such formal communication was ever sent from the Board."

[39] The evidence relied on by the respondent to show that the Prime Minister's advice was not obtained are the various Board minutes referred to earlier which shows that the matter was discussed at several meetings and arrangements were made to discuss the matter with the Prime Minister. The last such arrangement as shown on the minutes was on 17th November 2009, when it was decided that a three member committee of the Board including the Chairman Mr. Jolly and two other members meet with the Prime Minister to discuss the appointment of a Manager. Mr Jolly who testified on behalf of the respondent testified that approval of the Prime Minister for a new contract for the appellant was never sought nor did the Prime Minister give his advice on the appointment of a Manager. This evidence of Mr. Jolly was not contradicted. The learned judge found that Mr. Joel Joseph who gave evidence for the appellant, his testimony was in part contrary to the minutes of the Board. Mr. Joseph stated in his witness statement:

> "3. I can say that I was also a member of the Board of Directors when her contract came to an end in December 2008 and was aware that Mariette Warrington had exercised the machinery for her reappointment as General Manager by indicating that she would want a

new period of service as manager if the hierarchy of Dominica Broadcasting Corporation were prepared to facilitate following consultation with the Prime Minister as required by legislation.

"4. I can say that on the 17th day of February 2009 I attended a meeting with the Prime Minister at the Financial Centre on the 3rd Floor for the purpose of consulting on the matter of the appointment of a General Manager following the expiry of Marriette [sic] Warrington [sic] employee contract.

"5. Also present at the said meeting were fellow Board members, Aurelius Jolly, Ian Monroe [sic], Gina Dyer, Peter Karam, Cornelius Hyacith [sic], Carleen [sic] Richards and myself. At that meeting an instruction was given by the Prime Minister which was that Mariette Warrington should be offered a contract for a further 3 years employment in the capacity as General Manager of Dominica Broadcasting Corporation.

"6. I can confirm that I clearly heard the Prime Minister Hon. Roosevelt Skerrit give the said instructions in the presence of all of the aforesaid Board members.

"7. I can say that I attended the Board meeting that followed the said instructions and consultation with the Prime Minister on the subject of granting Mariette Warrington a new employment contract as general Manager and that at that meeting it was agreed a sub committee would be put in place in order to pursue discussions with Mariette Warrington to facilitate the instruction of the Prime Minister pursuant to said consultation.

"8. Following the said Board meeting the term of that Board came to an end and a new Board was appointed and I can say that I was not invited to be a member of that Board by the relevant Minister who was the Hon. Loreen Roberts."

[40] There were indeed several inconsistencies in the evidence of Mr. Joseph. His testimony in his witness statement of the meeting with the Prime Minister was indeed inconsistent with the minutes of the Board at which meeting Mr. Joseph was present. Mr. Joseph acknowledged this inconsistency in his oral testimony. He also acknowledged that there were no minutes of a sub-committee to be established to hold discussions with the appellant. Mr. Joseph in his oral testimony agreed that while he

stated in his witness statement he had only attended one meeting of the Board after the meeting with the Prime Minister, the minutes showed that he had attended five meetings and at all five of those meetings the matter of the appointment of a Manager was discussed. In fact, at those meetings it was agreed to seek a legal opinion from Dr. Antoine and the Board also agreed the fees to be paid to Dr. Antoine. In view of the evidence that was before the learned judge it was open to the learned judge to find that on a balance of probabilities the Prime Minister had not given advice to the respondent on the appointment of a Manager.

Section 47 of the Interpretation Act

[41] The appellant argued alternatively, that the Prime Minister having given his advice for the appellant's appointment by letter dated 14th December 2000, no further advice was necessary for a renewal of the employment of the appellant. The appellant relied on section 47 of the **Interpretation and General Clauses Act**.

[42] The appellant further contends that by her appointment she was given the assurance that she would be given successive contracts of employment and she could only be dismissed for cause. This argument has no merit. The 2004 contract specifically provided provisions for further employment which required the appellant to give notice in writing of her desire to enter into a new service agreement with the respondent, and for termination without cause.

[43] Mr. Lawrence, SC submits that section 47 of the **Interpretation Act** supports the respondent's contention that for any reappointment, the consent that was required for the initial appointment was also required for a reappointment.

Discussion

[44] Section 47 of the **Interpretation Act** reads as follows:

> "47. Where by any written law a power to make any appointment is conferred, then, unless the contrary intention appears, the authority having power to make the appointment shall also have –
>
> (a) power to remove or suspend any person appointed in exercising the power;
>
> (b) power, exercisable in the like manner and subject to the like consent and conditions, if any, applicable on his appointment –
>
> (i) to reinstate him on his suspension, or re-appoint him on his removal, his resignation, the expiration of his office, or otherwise;
>
> (ii) to appoint another person in his stead or to act in his stead and to provide for the remuneration of the person so appointed; and

(iii) to withhold his remuneration in whole or in part during any period of suspension from office, and to terminate his remuneration on his removal from office,

but where the power of appointment is only exercisable upon the recommendation or subject to the approval, consent or concurrence of some other person or authority the power of removal shall, unless the contrary intention is expressed in the written law, be exercised only upon recommendation, or subject to the approval, consent or concurrence of that other person or authority."

[45] I am of the view that section 47 is of no assistance to the appellant. The section makes it very clear that where a power granted by statute is to be exercised on certain conditions, whenever the power is to be exercised those conditions have to be met. The appellant having been appointed for a fixed period, and that period having expired, the Board would have to exercise its powers under section 6(6) to appoint the appellant for a further period on terms and conditions agreed. In the exercise of this power the respondent must act in accordance with the provisions of the Act which requires the Board to exercise its power on the advice of the Prime Minister. The fact that the Prime Minister's advice may not have been given in relation to the 2004 contract is of no moment. Such conduct cannot trump the clear provision of the Act which stipulates that the Board must act on the advice of the Prime Minister in appointing a Manager.

The Labour Contracts Act

[46] The appellant contends that pursuant to section 2(3)(e) of the **Labour Contracts Act**, it is unlawful for a person to work without a contract. Therefore, the appellant having worked as Manager for 16 months after the expiration of the 2004 contract there was an implied contract of employment.

[47] Mr. Lawrence, SC in response, submitted that the **Labour Contracts Act** is of general application, whereas the **Dominica Broadcasting Corporation Act** is a specific legislation which makes provision for the employment of the staff of the respondent. The **Labour Contracts Act** is therefore not applicable to the appellant.

Discussion

[48] The **Labour Contracts Act** makes provision in section 3 for all employers (except where the employee is specified to be excluded pursuant to section 2(3)) within 14 days of commencement of employment to prepare a labour contract to be executed by the employer and the employee. The matters to be included in the contract are specified in section 5 and include the general terms and conditions of employment. Where an employer fails to comply with section 3, section 10 provides that the basic

labour contract outlined in the schedule to the Act would be applicable. Noticeably this labour contract does not make provision for termination without cause by the employer but only by the employee.

[49] The question that arises is whether the **Labour Contracts Act** is applicable in view of the specific provision of the **Dominica Broadcasting Corporation Act**. The general rule is, where specific provisions are made to govern a matter, then the general provisions are not applicable. The **Dominica Broadcasting Corporation Act** makes specific provision for the appointment of a Manager. The Board, in appointing a Manager, must act in accordance with the advice of the Prime Minister. The general provisions of the **Labour Contracts Act** cannot supersede the specific provisions of the **Dominica Broadcasting Corporation Act**. To imply a contract pursuant to the **Labour Contracts Act** where the express provisions of the **Dominica Broadcasting Corporation Act** have not been complied with would indeed render the provisions of the latter Act nugatory. I am of the opinion that the **Labour Contracts Act** does not apply.

[50] The effect of the failure of the respondent to get the advice of the Prime Minister meant that any agreement the respondent entered into for the appointment of a Manager would be void and unenforceable. I agree with the submission of the respondent that the appellant was therefore only entitled to be paid for the services rendered.

[51] Having considered issues A and B and determined that there was no implied contract between the appellant and respondent, issue C accordingly falls away.

[52] For the reasons stated above, I would dismiss this appeal.

[53] In the court below the learned judge awarded costs to the respondent on the counterclaim, no order was made in relation to the claim. I therefore order that the costs of this appeal be assessed if not agreed within 21 days.

Gertel Thom
Justice of Appeal

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Mr.
Mario Michel
Justice of Appeal