EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANGUILLA

AXAHCVAP2014/0011

BETWEEN:

ANGUILLA ELECTRICITY COMPANY LIMITED

Appellant

and

ANGUILLAN DEVELOPMENT CORPORATION LTD

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Mario Michel	Justice of Appeal

On Written Submissions:

Ms. Jeri Richardson for the Appellant
Ms. Tara Carter for the Respondent

2015: October 21.

Interlocutory appeal – Appointment of referee –Whether the learned judge erred in ordering the appointment of a referee – Part 40 of the Civil Procedure Rules 2000 – Costs order – Whether the learned judge erred in awarding costs against appellant

The Anguillan Development Corporation Ltd ("the Corporation"), a developer of the of a tourism project in Anguilla and the Anguilla Electricity Company Limited ("the Electricity Company"), were locked in a dispute in relation to the alleged failure of the Electricity Company to supply electricity to a reverse osmosis plant owned by the Corporation. As a consequence, the Corporation filed an application for an injunction against the Electricity Company to essentially compel the Electricity Company to supply it with electricity. The Corporation was directed by the court to serve the application on the Electricity Company. The learned judge adjourned the inter partes hearing of the application to 18th November 2014 in order to give the parties an opportunity to have discussions towards a resolution of

the matter. Discussions between the parties were not forthcoming and as a consequence of the Electricity Company's failure to provide electricity to the Corporation, the Corporation, on the day before the inter partes hearing, filed a claim against the Electricity Company, alleging, amongst other things, breach of statutory duty and interference with economic interests.

At the inter partes hearing of the application for an injunction held on 18th November 2014, the learned judge dismissed the application and ordered that the matter be adjourned to 18th December 2014 for a report with reference to the appointment of a referee in the substantive claim. The learned judge felt that despite the fact that pleadings were not closed, as no defence had yet been filed, the appointment of a referee at this point in the proceedings would fast track the hearing of the substantive claim.

There had been extensive discussions between the parties and the court at the hearing about whether it was appropriate for the court to appoint a referee or an expert. Learned counsel for the Corporation felt that the appointment of an expert witness instead of a referee was more appropriate. Learned counsel who appeared on behalf of the Electricity Company was not of a similar view and voiced his objection to the appointment of a referee. However, the learned judge was concerned with the technical nature of the mattes involved in the claim and although she had decided not to grant the injunction, she felt that the substantive claim required expert assistance and the better course was to appoint a referee pursuant to Part 40 of the Civil Procedure Rules 2000 ("CPR 2000").

At the hearing held on 18th December 2014, learned counsel who appeared on behalf of the Electricity Company indicated that her client was unable to identify a referee. It was clear from the transcript that her client was still objecting to the appointment of a referee and did not feel that it was appropriate to agree to the appointment of a referee at that stage. Learned counsel indicated that when the court made its previous order, all the issues that were to be ventilated were not properly before the court. The learned judge took a different view and felt that once the order of 18th November 2014 was made, it should have been complied with. The judge also indicated that she was aware that pleadings were not yet closed, but that based on the affidavit evidence filed with the injunction application, she realised that a referee would be needed. The judge further explained that even though, pursuant to Part 40 of CPR 2000, the proceedings had not reached case management, or pre-trial review, Part 26 of CPR 2000 enabled her to appoint a referee at this point.

At the 18th December hearing, the learned judge was also concerned that instead of being presented with an agreed referee or a collaborative list of referees as she had expected, learned counsel for the Electricity Company was still resisting the court's proposal to appoint a referee. In those circumstances the judge ordered the parties to provide the

court with a list of proposed referees. In addition, the judge felt that the Electricity Company had not complied with the order of 18th November 2014 and on that basis the learned judge also ordered costs against the Electricity Company in the sum of US$1,000.00.

The Electricity Company, being aggrieved by the learned judge's order of 18th December 2014, has appealed against the order.

Held: allowing the appeal; setting aside the order of the judge dated 18th December 2014 in its entirety; remitting the claim to the High Court to be dealt with in accordance with CPR 2000 and ordering that the Anguilla Electricity Company Limited have costs on its appeal assessed in the sum of EC$1,500.00, that:

1. The law is well settled as to the circumstances in which an appellate court will interfere with the exercise of the discretion of the judge at first instance. It is only where an appellate court is satisfied that the judge in the lower court either erred in principle in his or her approach, or has left out of account or taken into account some aspect that he or she should or should not have considered and as a result the decision exceeded the generous ambit within which reasonable disagreement is possible or the decision is wholly wrong, that the appellate court will interfere with the exercise of the judge's discretion.

   Hadmor Productions Ltd and others v Hamilton and others [1982] 1 All ER 1042 applied; **George Allert et al v Joshua Matheson et al** GDAHCVAP2014/0007 (delivered 24th November 2014, unreported) applied; **Dufour and Others v Helen Air Corporation Ltd and Others** (1996) 52 WIR 188 applied; **Attorney General et al v Geraldine Cabey** MNIHCVAP2008/0008 (delivered 12th January 2009, unreported) applied; **Tafen Ltd v Cameron-MacDonald and Another Practice Note** [2000] 1 WLR 1311 applied; **Enzo Addari v Edy Gay Addari** BVIHCVAP2005/0021 (delivered 23rd September 2005, unreported) applied.

2. In the present case, the learned judge was concerned about the technical nature of the matter. This was the basis for her proposing to appoint a referee. However, the learned judge gave no consideration to the factors that are relevant in relation to the appointment of a referee as prescribed in Part 40 of CPR 2000. Accordingly, the learned judge did not take into account the relevant factors but instead took into account irrelevant factors such as the technical nature of the claim and was in clear violation of Part 40 of CPR 2000. In the circumstances, the exercise of the learned judge's discretion was assailable and it fell to this Court to exercise the discretion afresh. On the basis of the errors committed by the judge, the order for the appointment of a referee was set aside.

3. Part 40 of CPR 2000 prescribes the rules by which a court may appoint a referee. The rule makers have indicated the point of time in the pleadings at which the referee can be appointed – either at the case management conference or at the pre-trial review hearing. The reason for this is that by the time the pleadings would have been closed, it would be very apparent to the parties the exact nature of points of contention. Further, Part 40 of CPR 2000 requires the court to identify the claim of any issues or allegation of fact that should be tried. Accordingly, if there is an intention by a judge to depart from the general rule as to when a referee is to be appointed, the judge must provide clear reasons for doing so.

4. Given the totality of circumstances that existed before the learned judge in this case, it was not open to the judge to review the affidavits that were filed with the application for the injunction and on these documents determine that it was appropriate to appoint a referee to determine the substantive claim, particularly since the pleadings had not been closed. The better course was for the judge to await the close of pleadings so as to be able to ascertain what the real issues between the parties were. Once this had been done, the judge would only then be able to identify the question or issue upon which the referee was to report. Accordingly, in the absence of any reasons being provided by the judge for the departure from the general rule, the Court was of the view that the judge erred in so doing.

5. The award of costs is in the discretion of the court. In the present case, even though the learned judge had expected the parties to have agreed on the referee or the lists of persons from whom a referee was to be extracted, it could not properly be said that the Electricity Company disobeyed the court's order, whatever may have been the judge's expectation. Accordingly, the learned judge exercised her discretion improperly in ordering costs against the Electricity Company.

JUDGMENT

Introduction

[1] **BLENMAN JA:** This is an interlocutory appeal by the Anguilla Electricity Company Limited ("the Electricity Company") against the judgment of the learned judge dated 18th December 2014 in which she ordered that a referee be appointed in the matter before the court (of first instance) and that the parties file a list of agreed referees on or before 29th December 2014 and that the Electricity

Company pays to the Anguilla Development Corporation Ltd ("the Corporation") costs in the sum of US$1,000.00.

[2] The Electricity Company is aggrieved by the learned judge's decision and has appealed against the decision. The Corporation does not oppose the appeal save and except the order that the Electricity Company seeks in relation to costs of the appeal to be paid by the Corporation.

Grounds of Appeal

[3] The Electricity Company has filed a number of grounds of appeal which can be concretised as follows:

(a) Whether the learned judge exercised her discretion improperly in directing the parties to appoint a referee in circumstances where the pleadings had not been closed and in breach of rules 40.1 to 40.3 of the **Civil Procedure Rules 2000** ("CPR 2000"); and

(b) Whether the judge exercised her discretion improperly in awarding costs against the Electricity Company.

Background

[4] The Corporation is a developer of the tourism project in Anguilla known as CuisinArt Golf Resort and Spa. It also purchased the former Flag Luxury Properties Golf Course Project (also referred to as the Temenos Project) and is apparently in the process of developing the Reef Hotel at the golf course ("the Resort").

[5] The Corporation intends to rely on solar technology to run its resort facilities. It applied to the Electricity Company for planning permission and approval for the commissioning of two stand-alone solar arrays at its resort. The solar arrays were to supply power to the Resort's reverse osmosis plant. Negotiations ensued between the Corporation and the Electricity Company, however, they reached a

deadlock and the Electricity Company refused to provide electricity to the Corporation. The reasons for the deadlock are not material to this appeal and therefore I will refrain from delving into their details.

[6] The Corporation and the Electricity Company were locked in dispute in relation to the alleged failure of the Electricity Company to supply electricity to the reverse osmosis plant owned by the Corporation. As a consequence, the Corporation filed an application for an injunction in which it sought (in effect) to compel the Electricity Company to supply it with electricity. The Corporation was directed to serve the application for the injunction. On the return date, the learned judge further adjourned the hearing of the injunction to 18th November 2014 and gave the parties an opportunity to discuss the matter with a view to an amicable resolution. By 18th November 2014 the parties were unsuccessful in resolving their dispute amicably. By this time and as a consequence of the Electricity Company's failure to provide electricity to the Corporation, the latter had filed a statement of claim against the Electricity Company and alleged, among other things, breach of statutory duty and unlawful inference with economic interests.

[7] At the inter partes hearing of the injunction held on 18th November 2014, the learned judge dismissed the application for the injunction and made an order that the matter be adjourned for report on 18th December 2014 with reference to the appointment of a referee.

[8] The transcript of the inter partes hearing of 18th November 2014 reveals that the learned judge was of the view that the appointment of a referee would have served to fast track the hearing of the substantive claim and that the Electricity Corporation, by refusing to agree to the appointment of the referee was, as a consequence, being uncooperative. It is noteworthy that at the time the learned judge was addressing the application for the injunction, no defence had been filed in the substantive claim. Consequently, the date for the case management

conference had not arrived. In fact, the learned judge heard the application for the injunction one day after the Corporation had filed its statement of claim.

[9] The transcript of the proceedings of 18th November 2014 further reveals that the learned judge was concerned with the technical nature of the matters involved in the claim since she had already determined that she would not have granted the injunction that was sought, but felt that the substantive claim required expert support in the nature of a referee. During the hearing, there was extensive discussion between both learned counsel and the judge as to whether it was appropriate for the court to appoint a referee or an expert. Learned counsel, Ms. Carter, who appeared on behalf of the Corporation, had indicated to the court that the appointment of an expert witness instead of a referee was appropriate in all of the circumstances. Learned counsel, Mr. Kelsick, who had then appeared on behalf of the Electricity Company, was not of a similar view and voiced his objection to the appointment of a referee. Even though there was great resistance from counsel, the judge felt that based on the very technical nature of the matter, the better course was to have appointed a referee pursuant to Part 40 of CPR 2000 in order to provide some much needed assistance to the parties and to the court.

[10] In order to properly address the Electricity Company's complaints, it is useful to refer to the transcripts of the proceedings in the court of first instance in further detail.

Transcript of 18th November 2014

[11] The transcript reveals that there was extensive discussion between the learned judge and both counsel on the appropriateness of appointing a referee in circumstances where a defence had not been filed and there was no identification of any technical issue that warranted further investigation. The judge in adjourning the application on 18th November 2014 had directed the parties to formulate and

agree on the referee and should they fail to do so, the judge indicated that each party should provide a list of possible persons who could serve as referees.

[12] The judge genuinely formed the view that due to the very technical nature of the claim which may well have involved matters of engineering coupled with the court's and counsel's inability to deal with the engineering issues, the interest of justice would have been best served by the appointment of a referee under Part 40 of CPR 2000. Despite the resistance from both counsel, the court nevertheless proceeded to give directions for the appointment of a referee.

[13] The learned judge had this to say in relation to CPR 40.1:

> "Where the matter is of a scientific nature and the court requires assistance, they may appoint a referee. And the referee, obviously the referee would have to be in the area that the court is not equipped to deal with."[1]

[14] The judge acknowledged that Part 40 of CPR 2000 provides that a referee may be appointed at a case management conference or a pre-trial review. She said that she understood that what she was conducting was neither a case management conference nor a pre-trial review hearing because the defence obviously had not been filed at this point of time.

[15] I now turn to the transcript of proceedings of 18th December 2014.

Transcript of 18th December 2014

[16] Learned counsel, Ms. Keisha Spence, appeared on behalf of the Electricity Company on 18th December 2014 and indicted that her client was unable to identify a referee. It is clear from the transcript that her client was still objecting to the appointment of a referee and did not feel that it was appropriate to agree to the appointment of a referee at that stage. Ms. Spence took issue with whether or not the court had actually made an order for the appointment of a referee. Ms Spence

[1] Transcript of Chamber Proceedings (held on 18th November 2014), record of appeal, tab 7, at p. 92, lines 22 – 25 to p. 93, line 1.

indicated to the court that when the court had made its previous order, if at all, all of the issues that were to be ventilated were not properly before the court and that pleadings were not yet closed. [2]

[17] The judge had another view and felt that once the order was made on 18th November 2014, it should have been complied with. The learned judge indicated that she was aware that the pleadings were not closed at the time when she made the order for the appointment of a referee, however, she 'was satisfied that the affidavits in the injunction application gave [her] sufficient leeway to realise that a referee [was] going to be needed; an expert [was] going to be needed'.[3]

[18] The learned judge again, as she did at the hearing of 18th November 2014, acknowledged that Part 40 of CPR 2000 stipulates that a referee must be appointed at case management or pre-trial review. However, the judge stated that this was subject to Part 26 of CPR 2000 which enables the court to 'take any other step, give any other direction or make any order for the purpose of managing the case and furthering the overriding objective …'[4]

[19] The court was concerned that the hearing of the substantive claim should have been expedited and genuinely felt that the appointment of referee would have yielded the desired outcome. The learned judge was concerned that on the return day of 18th December 2014, instead of being presented as she had expected with either an agreed referee or a collaborative list of referees, Ms. Spence was still objecting to the court's proposal to appoint a referee. It is in those circumstances and against that background that the learned judge made the order the Electricity Company seeks to have impugned.

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[2] Transcript of Chamber Proceedings held on 18th December 2014, record of appeal, tab 8, at p. 120, lines 22 – 25 to p. 121,line 1.
[3] Ibid at p. 122, lines 21 – 24.
[4] Ibid at p. 111, lines 11 – 22.

[20] It is of interest that even after the learned judge had indicated her order, Ms. Spence enquired of the judge the issues of fact or the issues of concern that the court was minded to refer to the referee.[5]

[21] It is noteworthy that the learned judge intimated that if the Electricity Company did not comply with the court's order in relation to the appointment of a referee, the court would have been minded to enter judgment against the company.

[22] Further, the court was concerned that the Electricity Company had not complied with this order of 18th November 2014 and on that basis the court awarded the Corporation costs of the day in the sum of US$1,000.00. The Court then proceeded to make the order which the Electricity Company seeks to have assailed.

[23] I propose now to refer to the relevant legal provisions.

The Law

[24] CPR 40:1 stipulates:

> "If the –
> (a) court considers that the claim requires –
> (i) prolonged examination of documents; or
> (ii) scientific or local investigation which cannot conveniently be carried out by the court;
> (b) matters in dispute are wholly or mainly a matter of account; or
> (c) parties agree;
> then subject to rule 40:7, then the court may order the claim or any issue or allegation to be tried by a referee."

[25] CPR 40.2 states:

> "The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim."

[5] Ibid at pp. 130-132.

[26] CPR 40.3 states:

> "(1) The general rule is that a referee must be appointed at a case management conference or pre-trial review.
> (2) The referee must be a person agreed on by the parties or, if they fail to agree, a person selected by the court in accordance with paragraph (3).
>
> (3) If the parties cannot agree who should be the referee, the court may-
> (a) select the referee from a list prepared or identified by the parties; or
> (b) direct that the referee be selected in such other manner as the court directs.
>
> (4) The court must identify the question or issue upon which the referee is to report.
>
> (5) The court must decide that fee is to be paid to the referee and by whom.
>
> (6) Notwithstanding paragraph (5), the court may ultimately order any party to pay the fee of the referee."

Ground 1: Whether the learned judge exercised her discretion improperly in directing the parties to appoint a referee in circumstances where the pleadings had not been closed and in breach of CPR 40.1 – 40.3

The Corporation's Submissions

[27] By notice of opposition, the Corporation has indicated its opposition to the appeal only in so far as the Electricity Company is seeking to have it (the Corporation) bear the costs of the appeal. Importantly, the Corporation has indicated that it does not intend to oppose the substantive appeal.

Electricity Company Submissions

[28] Learned counsel, Ms. Jeri Richardson, submitted that the learned judge ought to have complied with Part 40 of CPR 2000 in the event that she was inclined to appoint a referee. The learned judge acted in violation of CPR 2000 and therefore exercised her discretion improperly.

[29] Learned counsel, Ms. Richardson, submitted that there was no basis for the judge to insist upon the appointment of a referee. Ms. Richardson said that it was clear that the judge did not examine whether the claim required prolonged examination of documents or scientific or local investigation which could not conveniently be carried out by the court as prescribed by Part 40 of CPR 2000, but merely acted on the basis that it was an engineering matter.

[30] All of the Electricity Company's complaints relate to the exercise of the learned judge's discretion. The law is well settled as to the circumstances in which an appellate court will interfere with the exercise of the discretion of the judge at first instance. The law needs no repetition even though I will refer to the principles that were enunciated in **Hadmor Productions Ltd and others v Hamilton and others** which indicate that an appellate court has a limited role in an appeal when dealing with the exercise of discretion of the judge of the lower court. In that case, the House of Lords outlined the circumstances in which the judge's exercise of discretion may be set aside by an appellate court:

> "[The Court of Appeal] must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised its discretion differently…It may set aside the judge's exercise of his discretion on the ground that it was based upon a misunderstanding of law or the evidence before him..."[6]

[31] It is only where an appellate court is satisfied that the judge in the lower court either erred in principle in his or her approach, or has left out of account or taken into account some aspect that he or she should or should not have considered and as a result the decision exceeded the generous ambit within which reasonable disagreement is possible or the decision is wholly wrong, that the Court will interfere with the exercise of the judge's discretion.[7]

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[6] [1982] 1 All ER 1042; see also Dufour and Others v Helen Air Corporation Ltd and Others (1996) 52 WIR 188; Attorney General et al v Geraldine Cabey MNIHCVAP2008/0008 (delivered 12th January 2009, unreported); Tafen Ltd v Cameron-MacDonald and Another Practice Note [2000]1 WLR 1311; Enzo Addari v Edy Gay Addari BVIHCVAP2005/0021 (delivered 23rd September 2005, unreported); George Allert et al v Joshua Matheson et al GDAHCVAP2014/0007 (delivered 24th November 2014, unreported).

[7] George Allert et al v Joshua Matheson et al GDAHCVAP2014/0007.

[32] A reading of the transcript leads me to the ineluctable conclusion advanced by Ms. Richardson. It is clear that the learned judge was concerned about the technical nature of the matter and felt unable to preside in such a matter. No consideration was given to the factors as prescribed in CPR 40.1. There is therefore great merit in this line of the complaint in so far that the learned judge did not take into account the relevant factors but instead took into account irrelevant factors such as the technical nature of the claim; in the circumstances, the exercise of her discretion is then assailable. It therefore falls to this court to exercise the discretion afresh.

[33] To buttress her arguments, learned counsel, Ms. Richardson, indicated that the learned judge could not have been said to have been acting pursuant to CPR 40.1(b) since the matters in dispute were not wholly or mainly matters of account. It is evident to me from a reading of the pleadings and the transcript of the proceedings that these factors did not arise before the learned judge. I therefore have no difficulty in accepting this argument as advanced by learned counsel, Ms. Richardson.

[34] The final complaint by the Electricity Company is that the learned judge erred in seeking to appoint a referee prior to the case management conference. Learned counsel, Ms. Richardson, complains that there was no good reason or special circumstances which justify the departure from the general rule that the referee must be appointed at a case management conference or at a pre-trial review hearing.

[35] The examination of the transcript indicates that the learned judge was concerned that the substantive matter should have been expedited even though the defence had not been filed. As indicated, the judge was concerned that the substantive claim may have involved matters of an engineering nature and formed the view that neither the court nor both counsel would have been equipped to address them.

[36] Ms. Richardson's final ground of complaint is that there was simply no agreement between the parties. Accordingly, in all the circumstances, Part 40 of CPR 2000 was not triggered. I agree entirely with Ms. Richardson and this complaint needs no further elucidation.

[37] This brings me now to the need to exercise the discretion afresh and in so doing I will allow the appeal on the basis of the errors that were made by the learned trial judge and set aside the order for the appointment of the referee since there was non-compliance with Part 40 of CPR 2000.

Ground 2: Whether the judge exercised her discretion improperly in awarding costs against the Electricity Company

[38] Learned counsel, Ms. Richardson, complains that the Electricity Company had not acted in breach of any rule or order and there was therefore no basis for the learned judge to impose a cost order against the Electricity Company. I agree. The learned judge had clearly made an order on 18th November 2014 for the report on the appointment of the referee.[8] Even though the judge had clearly expected the parties to have agreed on the referee or the list of persons from whom a referee was to be extracted, it cannot be properly said that the Electricity Company disobeyed the Court's order whatever may have been the judge's expectation.

[39] A perusal of the transcript indicates that the learned judge expected that the parties would have been in a position to report on the appointment of a referee on 18th December 2014. The transcript also reveals that even at the conclusion of the hearing on 18th December 2014, the parties remained unclear as to what aspect of the claim or issue or allegation was to have been tried by the referee. This is more so based on the fact that CPR 40.3(4) requires the court to identify the claim of any issue or allegation or fact that should be tried by the referee. It is noteworthy that learned counsel who appeared on 18th November 2014 on behalf of the

[8] Order of the court dated 18th November 2015, record of appeal, tab 9.

Electricity Company unsuccessfully sought the court's assistance in this regard. This state of affairs, as I have indicated above, continued on 18th December 2014. It is therefore evident that learned counsel was quite correct in making those enquires of the court.[9]

[40] This brings me to the question of whether or not the learned judge was correct in making the costs order against the Electricity Company. Costs are in the discretion of the court. However, given the totality of circumstances as outlined above, it is clear that the learned judge exercised her discretion improperly in awarding costs against the Electricity Company.

[41] The above grounds of appeal on which the Electricity Company have been successful are individually and collectively sufficient to dispose of the appeal. It is clear that the learned judge exercised her discretion improperly in ordering the parties to agree on a referee in circumstances where the issues that were formed had not been crystallised and in clear violation of Part 40 of CPR 2000. Accordingly, the appeal succeeds.

[42] For the sake of completeness, it is important to state that the rule makers in their wisdom have indicated the point of time in the pleadings at which the referee can be appointed – either at the case management conference or at pre-trial review hearing. The reason for this is that by the time the pleadings would have been closed, it would be very apparent to the parties the exact nature of points of contention. This is the general rule and if there is an intention to depart from the general rule clear reasons must be provided for so doing.

[43] Given the totality of circumstances that existed before the learned judge, I am not of the view that it was open to the judge to review the affidavits that were filed in the application for the injunction and on these documents determine that it was appropriate to appoint a referee to determine the substantive claim, particularly

[9] Transcript of Chamber Proceedings held on 18th December 2014, record of appeal, tab 8, at p. 129 – 131.

since the pleadings had not been closed.[10] It is not unusual for new issues to arise as a consequence of the defence or even at a later stage such as the filing of the reply. The better course was for the judge to await the close of pleadings so as to be able to ascertain what the real issues between the parties were. Once this has been done, the judge would only then be able to identify the question or issue upon which the referee is to report.[11]

[44] In the absence of any reasons being provided for the departure from the general rule, even though the learned judge was well intentioned, I have no choice but to agree with the arguments that have been advanced by learned counsel Ms. Richardson, namely that the learned judge had no good reason for so doing.

Costs in the appeal

[45] Learned counsel, Ms. Richardson, implored the court to award the Electricity Company its costs on the appeal.

[46] As indicated earlier, learned counsel, Ms. Carter, in the notice of opposition filed on behalf of the Corporation, has indicated that the Corporation objects to this Court awarding costs to the Electricity Company. In so far as the Electricity Company has prevailed in relation to all of its grounds of appeal, the general rule in relation to costs applies. It is trite law that costs follow the event.

[47] It is passing strange that learned counsel, Mrs. Carter, has proffered no submissions or arguments in support of her opposition to this Court awarding the Electricity Company costs. In any event, having been successful in relation to all its grounds of appeal, the Electricity Company is entitled to its costs on this appeal, which is assessed in the sum of EC$1,500.00.

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[10] For the sake of completeness, since the judge had dismissed the application before her for the injunction she did not have any jurisdiction to proceed to make any other order on that aplication, that is, to make an order for the appointment of a referee. However, this point was not taken by the Anguilla Electricity Company but had it been so taken it would have been another ground on which the appeal would have been allowed.

[11] See CPR 40.3(4).

Conclusion

[48] In light of the foregoing, the order is as follows:

(1) Appeal allowed and the order of the judge dated 18th December 2014 is set aside in its entirety.

(2) The claim is remitted to the High Court for it to be dealt with in accordance with CPR 2000.

(3) The Anguilla Electricity Company Limited shall have costs on its appeal assessed in the sum of EC$1,500.00.

[49] I gratefully acknowledge the assistance of all learned counsel.

Louise Esther Blenman
Justice of Appeal

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Mario Michel
Justice of Appeal