EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2015/0004

BETWEEN:

DR. NAZIR HADEED
(Trading as Hadeed Variety Store)

Appellant

and

CLICO INTERNATIONAL GENERAL INSURANCE LIMITED

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. Ruggles Ferguson and with him Ms. Anyika Johnson for the Appellant
Mr. James Bristol and with him Ms. Kimber Guy-Renwick for the Respondent

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2015: September 15;
2016: November 7.

Civil appeal – Insurance contract – Condition precedent – Whether appellant failed to satisfy condition of the contract of insurance – Whether learned trial judge erred in her findings of fact

The appellant, Dr. Hadeed, owned and operated a variety store where he sold various goods which were insured by CLICO for various perils, including loss or damage directly caused by flood. During the currency of the insurance policy, his store was flooded by rain water which entered the building housing the store through a damaged roof on the top floor of the building and made its way to the bottom floor of the building where his store was located. The flood water caused damage to his goods and consequential loss to him. Dr. Hadeed submitted a claim to CLICO alleging damage to his goods and consequential loss to him. He sought indemnification for the loss suffered. A representative of CLICO went to the store to survey and assess Dr. Hadeed's loss.

Dr. Hadeed subsequently received further communication from CLICO's loss adjuster, Mr. Monte S. Ponton, requesting certain information from him, which information Dr. Hadeed claimed to have compiled and presented to Mr. Ponton on a visit which he made to the store. Dr. Hadeed later met with CLICO where he was told that his loss was not fortuitous. Formal written confirmation of CLICO's denial of the claim came via a letter from Mr. Ponton in which he informed Dr. Hadeed that his claim was denied because the damage to his goods was not fortuitous, since Dr. Hadeed was aware that the property at risk was confined in a building that was lacking a reasonable standard of repair which would afford protection from elements such as rain. As such the resulting damage was not covered by the insurance policy.

Dr. Hadeed instituted proceedings against CLICO for damages for breach of the terms of the policy of insurance or indemnity or compensation for loss suffered by him as a result of flood damage to his stock-in-trade. He also claimed interest, costs and other relief. CLICO filed a defence denying liability to Dr. Hadeed on the basis that his store was not flooded within the meaning of the insurance policy, that any loss suffered by him was not caused by an insured peril, and that he had breached a condition precedent to the liability of CLICO under the policy of insurance when he failed to deliver to CLICO information required by them to form a judgment as to whether or not he had sustained loss.

The learned trial judge determined that Dr. Hadeed's goods were not damaged by a flood within the meaning of the insurance policy and that Dr. Hadeed had not complied with Condition 11 of the policy, which is a condition precedent to CLICO's liability under the policy. The trial judge accordingly ruled that Dr. Hadeed was not entitled to be indemnified by CLICO and dismissed the claim with costs to CLICO in the sum of $17,530.00.

Dr. Hadeed has appealed primarily against the findings of fact by the learned trial judge.

Held: allowing the appeal and setting aside the orders of the learned trial judge, that:

1. The issue in this case turns on the meaning of words and its bearing on the facts of the case. In that circumstance an appellate court is in as good a position as the trial judge to determine whether what occurred at the appellant's store was a flood within the meaning of the policy of insurance. On the facts of this case, there is no evidence of what transpired at Dr. Hadeed's store with respect to the flooding alleged other than that there was an accumulation of water on the floor of the store, which water originated from outside the building containing the property insured. Whatever may be the language used in the parties' pleadings or their written or oral submissions, the definition of flood in Dr Hadeed's policy encompasses water accumulating in the building containing the property insured, which water originated from outside the building. In that regard, the trial judge's ruling that the goods were not damaged by a flood within the meaning of the policy cannot stand.

2. A condition is precedent if it provides that the contract is not binding until the specified event occurs. It is clear from the language of Condition 11 and the nature of a contract of insurance, that Condition 11 of the insurance policy in this case was a condition of the contract of insurance entered into by the parties, which condition suspended the obligation of the insurance company to settle the insured's claim pending fulfilment of the condition or, put differently, a condition which Dr. Hadeed had to satisfy before CLICO would be liable to him under the policy. The learned judge was therefore correct in reaching the conclusion that Condition 11 was a condition precedent to CLICO's liability under the policy.

3. There was no proper basis, in law or in fact, for the finding by the trial judge that Dr. Hadeed had not satisfied the condition precedent to the liability of CLICO under the policy by not providing the documents requested by CLICO's loss adjuster on the basis of which he could determine the merits of Dr. Hadeed's claim. The uncontroverted evidence at trial was that CLICO's loss adjuster had, at the time of his visit, made a determination that Dr. Hadeed's loss was not covered by the policy, and there was no need therefore to take the documents bearing on the loss. In any event, the onus is on the insurer to prove that a condition has been broken, not on the assured to prove compliance on his part with each and every stipulation. On this issue, there was no advantage which could have been gained by the trial judge by seeing and observing the witnesses as they gave their evidence in court that would justify the Court of Appeal's non-interference with the unjustified conclusion arrived at by the judge.

Bond Air Services Ltd v Hill [1955] 2 QB 417 applied; Watt v Thomas [1947] AC 484 applied.

JUDGMENT

[1] MICHEL JA: This is an appeal against the judgment of a trial judge in the Grenada High Court in which she dismissed a claim by the appellant, Dr. Nazir Hadeed ("Dr. Hadeed"), against the respondent, CLICO International General Insurance Limited ("CLICO"), as the insurer of goods which Dr. Hadeed claimed were damaged by an insured peril.

[2] The summarised facts of the case are that Dr. Hadeed owned and operated a variety store in St. George's, Grenada where he sold various items, including clothing, household items, cosmetics and electronics. His goods were insured by CLICO for various perils, including loss or damage directly caused by flood.

Dr. Hadeed claimed that on or about Saturday, 28th October 2006, during the currency of the policy of insurance issued to him by CLICO, his store was flooded by rain water which entered the building housing the store through a damaged roof on the top floor of the building and made its way to the bottom floor of the building where his store was located. The flood water caused damage to his goods and consequential loss to him.

[3] The store was not opened on the day of the flood because Dr. Hadeed was feeling unwell, and it was not until the following day when - upon hearing that St. George's was flooded - he went to his store and became aware of the flooding of the store and the resulting damage to his goods. On the ensuing Monday 30th October 2006, Dr. Hadeed submitted a claim to CLICO, as the insurer of his goods, alleging damage to his goods and consequential loss to him, and seeking indemnification for the loss thereby suffered. On that same day, a representative of CLICO, Mr. Brent Phillip, came to the store to survey and assess Dr. Hadeed's loss. Mr. Phillip took pictures of the goods, the ceiling and the floor, which still had two to three inches of water at the time. He requested that Dr. Hadeed take certain steps to minimise the damage to the goods, which Dr. Hadeed said that he did.

[4] On 2nd November 2006, Dr. Hadeed received a letter from CLICO's loss adjuster, Mr. Monte S. Ponton, requesting certain information from him, and a further letter of 8th November 2006 requesting other information, which information Dr. Hadeed claimed to have compiled and presented to Mr. Ponton on a visit which he made to the store on or about 15th to 16th November 2006. Dr. Hadeed alleged that Mr. Ponton took some of the documents and left the others. He also alleged that, in the course of this visit, Mr. Ponton glanced around the store and declared that this was not a flood. In response to a question to him by Dr. Hadeed, Mr. Ponton stated that there was no need to count the damaged goods because the damage to the goods was not covered by the insurance policy. Then on 28th November 2006, Dr. Hadeed was summoned to a meeting by CLICO, where he was told that

his claim was not fortuitous, which he understood to mean that it was not accidental. Formal written confirmation of CLICO's denial of the claim came via a letter from Mr. Ponton dated 7th December 2006 in which he informed Dr. Hadeed that his claim was denied because the damage to his goods was not fortuitous, since "you were aware prior to the proposal of coverage and after the issuance of the policy that the property at risk was confined in a building that was lacking a reasonable standard of repair which would afford protection from elements such as rain." The letter went on to state that "damage as caused by rainwater entering through a roof which required repairs cannot be considered fortuitous, thus the resulting damage would not be covered by any property policy of insurance."

[5] Being dissatisfied with CLICO's denial of his claim, Dr. Hadeed instituted proceedings against CLICO on 25th January 2007. Dr. Hadeed's claim form and statement of claim were amended on 25th May 2007 and his statement of claim was further amended on 28th November 2007. His claim against CLICO was for damages for breach of the terms of the policy of insurance issued to him by CLICO or indemnity or compensation for loss suffered by him as a result of flood damage to his stock-in-trade. He also claimed interest, costs and other relief.

[6] On 15th February 2007, CLICO filed a defence to the claim, which defence was amended on 23rd July 2007 following the filing of the amended claim form and statement of claim by the appellant on 25th May 2007. In its amended defence, CLICO denied liability to Dr. Hadeed on the basis that his store was not flooded within the meaning of the insurance policy, that any loss suffered by him was not caused by an insured peril, and that he had breached a condition precedent to the liability of CLICO under the policy of insurance when he failed to deliver to CLICO information required by them to form a judgment as to whether or not he had sustained loss.

[7] Of note is the fact that the basis of CLICO's denial of Dr. Hadeed's claim in its amended defence was totally different to the basis of its denial of the claim prior to the filing of the suit by Dr. Hadeed.

[8] Dr. Hadeed filed a reply to the defence on 19th March 2007 and an amended reply on 26th July 2007, following the filing of CLICO's amended defence. In his reply, Dr. Hadeed joined issue with CLICO on its defence.

[9] The learned trial judge, having considered the evidence given in the case before her - both in testimony before the court and in documents tendered and entered into evidence - determined that Dr. Hadeed's goods were not damaged by a flood within the meaning of the insurance policy and that Dr. Hadeed had not complied with Condition 11 of the policy, which is a condition precedent to CLICO's liability under the policy. The trial judge accordingly ruled that Dr. Hadeed was not entitled to be indemnified by CLICO and dismissed the claim with costs to CLICO in the sum of $17,530.00.

[10] By notice of appeal filed on 14th January 2015, and later substituted by amended notice of appeal filed on 8th July 2015, Dr. Hadeed appealed against the judgment of the trial judge dated 4th December 2014. He challenged the findings of the trial judge on the following grounds:

1. The decision of the learned trial judge goes against the weight of the evidence.

2. The learned trial judge erred in law when she held that the damage to the appellant's property was not caused by a flood.

3. The learned trial judge misdirected herself on the meaning of flood in law.

4. The learned trial judge wrongly held that the appellant had not satisfied the preconditions of his insurance policy so as to entitle him to compensation for the extensive water damage to his goods.

[11] Grounds 1, 2 and 3 of the grounds of appeal, focussing on the findings of the judge as to the meaning of flood and its application to the facts of the case, will be addressed together.

[12] The trial judge considered the definition of flood in the insurance policy (which essentially reproduces the primary meaning ascribed to it in the Oxford Dictionary) and concluded that there was no flood on the facts of this case.

[13] "Flood" is defined under the policy of insurance, and in the Oxford English Dictionary, as follows:

> "the overflowing or deviation from their normal channels of either natural or artificial water courses, bursting or overflowing of public water mains and any other flow or accumulation of water originating from outside the building insured or containing the property insured".

[14] I note that the conclusion arrived at by the learned judge on the evidence before her may be a factual finding which – in accordance with the case of Watt v Thomas[1] and the line of cases from both our courts and the English courts which have followed it - an appellate court will not lightly interfere with. But parties cannot justify unreasonable findings by a trial judge by taking refuge under the cover of factual findings made by a first instance court which ought not to be overturned on appeal because the judge who heard the case at first instance had the advantage of hearing and observing the witnesses as they gave evidence in court. If this were to become sacrosanct, then unreasonable findings made by a trial judge would be insulated from appellate review because of too strict an application of the principles emanating from or enunciated in Watt v Thomas. In any event, the issue here does not turn on the credibility of witnesses but on the meaning of words and its bearing on the facts of the case, and an appellate court is in as good a position as the trial judge to determine whether what occurred at the appellant's store on 28th October 2006 was a flood within the meaning of the policy of insurance.

[1] [1947] AC 484.

[15] On the facts of this case, there is no evidence of what transpired on Saturday 28th October 2006 with respect to the flooding alleged other than that there was an accumulation of water on the floor of Dr Hadeed's store, which water originated from outside the building containing the property insured. Whatever may be the language used in the parties' pleadings or their written or oral submissions, the definition of flood in Dr Hadeed's policy encompasses water accumulating in the building containing the property insured, which water originated from outside the building.

[16] Nothing in the cases referred to by the parties in their submissions, whether in the court below or before this Court, could detract from what in my view is the plain and obvious meaning of flood, as defined in the policy, and its applicability to the facts of this case.

[17] The case of Young v Sun Alliance and London Insurance Ltd.,[2] which both parties cited here and in the court below, and to which the trial judge referred in her judgment, concerned the meaning of flood in the context of a particular insurance policy the relevant provisions of which are very dissimilar to those in the insurance policy in this case.

[18] The case of Rohan Investments Limited v Philip Cunningham and Others Members of Syndicate,[3] which both parties also cited here and in the court below, and to which the trial judge also referred, and which she stated (at paragraph 105 of her judgment) that she was applying in the case before her, also concerned the meaning of flood in the context of a particular insurance policy the relevant provisions of which are very dissimilar to the provisions in the policy in the

[2] [1976] 3 All ER 561.
[3] [1998] EWCA Civil Division 44.

present case. In fact, in giving judgment in the English Court of Appeal in the Rohan Investments Limited case, Robert Walker LJ stated that the terms of the policy in that case were virtually identical with those in the Young case.

[19] I accordingly have no difficulty interfering with and indeed overturning the factual finding made by the trial judge in this case that the damage to Dr Hadeed's goods was not caused by flood as defined in the policy of insurance issued to him by CLICO. Grounds 1, 2 and 3 of the grounds of appeal - though phrased somewhat differently to the question asked and answered by the trial judge at paragraphs 99 (1) and 109 of her judgment – should, therefore, be allowed.

[20] Before moving on to the other ground of appeal, it is to be noted that the basis on which CLICO denied liability to Dr. Hadeed, at least prior to Dr. Hadeed's institution of proceedings in the court below, was not that there was no flood, but that his loss was not fortuitous. Mr. Ponton - writing on behalf of CLICO - informed the appellant as follows:

> "Upon review of all relative information we reported to your insurer and as per their instructions we write to advise that the basic principle of Insurance is that a loss must be fortuitous. In this regard you were aware prior to the proposal of coverage and after the issuance of the policy that the property at risk was confined in a building that was lacking a reasonable standard of repair which would afford protection from elements such as rain. Accordingly damage as caused by rainwater entering through a roof which required repairs cannot be considered fortuitous, thus the resulting damage would not be covered by any property policy of insurance."

[21] I agree with the skeleton submission made on behalf of Dr. Hadeed to the effect that the defective roof may very well be the explanation for the water coming into the building and causing extensive damage, but this is immaterial in determining whether there was an accumulation of water so as to constitute a flood. Dr. Hadeed submitted in effect that the reason for the water coming into the building from outside and accumulating on the floor has no bearing on whether what occurred was a flood within the definition of the term in the policy of insurance with which this case is concerned. I agree entirely.

[22] The other conclusions arrived at by the trial judge on the basis of which she dismissed Dr. Hadeed's claim were that Condition 11 of the policy of insurance was a condition precedent to the liability of CLICO under the policy, and that Dr. Hadeed had failed to comply with the condition.

[23] Dr. Hadeed's ground of appeal in relation to Condition 11 was more general than specific and allowed argument on both of the judge's conclusions relative to Condition 11. Ground 4 of the grounds of appeal reads as follows:

> "The Learned Trial Judge wrongly held that the Appellant had not satisfied the preconditions of his insurance policy, so as to entitle him to compensation for the extensive water damage to his goods."

[24] Condition 11 of the policy states as follows:

> "The insured shall also at all times at his own expense produce, procure and give to the Company all such particulars, plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proofs and information with respect to the claim and the origin and cause of the fire and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration on oath or in any other legal form of the truth of the claim and of any matters connected therewith."

[25] As to the issue of whether Condition 11 was a condition precedent to CLICO's liability under the policy, it is to be noted that there are various definitions or formulations of what is a condition precedent in a contract. Of these, I prefer the definition from the authoritative text on the law of contract under the common law of England, which reviews and distils the cases in arriving at its definition. According to Chitty on Contracts,[4] "A condition is precedent if it provides that the contract is not binding until the specified event occurs".[5] At paragraph 12-028, the authors state that "the parties may enter into an immediate binding contract, but

[4] Volume 1, 28th edn., Sweet & Maxwell 1999.
[5] At para. 2-136.

subject to a condition, which suspends all or some of the obligations of one or both parties pending fulfilment of the condition".

[26] Essentially, there are various types of conditions in contracts and one such type is a condition precedent, which may be a condition precedent to the formation of a contract or a condition precedent to the liability of one of the parties to an existing contract. In the present case, there was a contract of insurance existing between CLICO and Dr. Hadeed under the terms of which Dr. Hadeed paid a premium to CLICO in consideration of which CLICO provided insurance coverage to Dr. Hadeed for the insured risk. The issue, therefore, is whether Condition 11 was a condition precedent to the liability of CLICO under the contract of insurance, so that they would not be liable to indemnify Dr Hadeed for his loss unless he had satisfied the condition.

[27] It is clear from the language of Condition 11 and the nature of a contract of insurance, that Condition 11 of the insurance policy in this case was a condition of the contract of insurance entered into by the parties, which condition suspended the obligation of the insurance company to settle the insured's claim pending fulfilment of the condition or, put differently, a condition which Dr. Hadeed had to satisfy before CLICO would be liable to him under the policy. The learned judge was therefore correct in reaching the conclusion that Condition 11 was a condition precedent to CLICO's liability under the policy.

[28] The question then becomes whether Dr. Hadeed failed to satisfy Condition 11 of the policy of insurance so as to entitle CLICO to deny liability to him under the policy. Dr. Hadeed alleged in the court below and submitted before this Court that he had satisfied Condition 11 of the policy, while CLICO alleged and submitted that he did not.

[29] In her judgment, the trial judge made the following findings of fact, which neither of the parties took issue with:

(1) A letter dated 2nd November 2006 was sent to Dr. Hadeed by the loss adjuster (acting on behalf of CLICO) requesting certain documentation;

(2) By 15th November 2006 Dr. Hadeed had prepared a bundle of documents pursuant to that request;

(3) Even though CLICO claimed in their defence to Dr. Hadeed's claim that they had not received all of the information that they had requested, they concluded that Dr. Hadeed's loss was not covered under the policy and was not fortuitous;

(4) CLICO's representative testified that the documents which they requested from Dr. Hadeed could not assist them in determining whether or not Dr. Hadeed's loss was covered under the policy.

[30] The trial judge then ruled that she did not believe Dr. Hadeed when he stated that between 15th and 16th November 2006 the loss adjuster came to his store and he presented the loss adjuster with the bundle of documents requested and that the loss adjuster took some and left others. The judge stated the basis of her disbelief of Dr. Hadeed's evidence in paragraph 114 of her judgment, which paragraph I will reproduce in full:

> "This Court is hard pressed to believe this evidence. Mr. Ponton is an experienced Loss Adjuster. His company having written to [Dr. Hadeed] requesting certain documents, and, these documents having been produced, why would he only take some documents and not others from the bundle? Why then did the Loss Adjuster request the bundle?"

[31] But the answer to the first of the two questions posed by the trial judge can be found in Dr. Hadeed's evidence at the trial - which evidence was not controverted by Mr. Ponton when he gave evidence at the trial - that in the course of that same

visit to Dr. Hadeed's premises, when Mr. Ponton allegedly took some documents and left the others, Mr. Ponton made a determination and informed Dr. Hadeed that his loss was not covered under the policy and that there was no need to count the damaged goods. There was no need, therefore, to take documents bearing on Dr. Hadeed's loss.

[32] The answer to the second question, however, lay in the bosom of the loss adjuster, which no one - the trial judge included - sought to extract from him at the trial. What is clear though is that neither the loss adjuster nor any other representative of CLICO ever informed Dr. Hadeed that he had not provided all of the documents requested, far less that CLICO was unable to settle his claim as a result. Instead, Dr. Hadeed was told from his first encounter with CLICO's loss adjuster on 15th or 16th November 2006, and again on 28th November when he was summoned to a meeting by CLICO, that his loss was not covered under the policy because it was not fortuitous. Then on 7th December 2006, Dr. Hadeed received a letter from the loss adjuster which unequivocally declined his claim for indemnity on the basis only that his loss was not fortuitous because he had prior knowledge of the damaged condition of the roof through which the rain water came into the building and damaged his goods. The relevant portion of the letter was quoted in full in paragraph 20 hereof.

[33] How can an insurance company then, in a contract of the utmost good faith, seek on these facts to defend a claim brought by its insured for indemnification for loss occasioned by an insured peril, not on the basis on which it declined his claim, but on the basis that he had failed to satisfy a condition precedent to the liability of the insurer by not providing documents requested by the insurer's loss adjuster; documents which the loss adjuster testified would have no bearing on the insurer's determination of the merits of the claim. But it goes further, because the insured claimed that he had made the documents available to the loss adjuster and that he was never informed by any of CLICO's representatives that he had not made available to them any of the documents requested. In fact - and this has not been disputed by CLICO or any of its representatives - the first indication that

Dr. Hadeed had that CLICO was suggesting even that he had not made available to them the documents requested by the loss adjuster was after he had instituted proceedings against CLICO and CLICO had filed a defence to the claim. By this time, Dr. Hadeed having already instituted proceedings against CLICO, could no longer comply, if he had not already done so, with the condition precedent to the insurer's liability under the policy.

[34] There was in my view no proper basis, therefore, in law or in fact, for the finding by the trial judge that Dr. Hadeed had not satisfied the condition precedent to the liability of CLICO under the policy by not providing the documents requested by CLICO's loss adjuster on the basis of which he could determine the merits of Dr. Hadeed's claim. There was also no advantage which could have been gained by the trial judge by seeing and observing the witnesses as they gave their evidence in court that would justify the Court of Appeal's non-interference with the unjustified conclusion arrived at by the judge that Dr. Hadeed had failed to satisfy the condition precedent to CLICO's liability when, to his knowledge, he had delivered to CLICO (through its agents) the information requested by them regarding the flood and the goods damaged thereby and was never told by CLICO's agents prior to his institution of proceedings against them that he had not satisfied the condition. In this regard, I repeat paragraph 14 hereof and would allow ground 4 of Dr. Hadeed's grounds of appeal.

[35] Apart from her ruling that Dr. Hadeed had breached Condition 11 of the policy by failing to produce the documentation required by CLICO as a condition for him to recover under the policy (paragraph 128 of the judgment), the trial judge also ruled that Dr. Hadeed had failed to provide the declaration under oath or other legal form of the truth of the claim and any matter connected with it (paragraph 129 of the judgment). But there is no evidential basis, or any basis at all, for this ruling by the trial judge. The issue was not raised by CLICO (as the defendant in the court below) whether in its defence, its amended defence, its witness statements, its pre-trial memorandum or in the testimony of its witnesses at the trial. And, in

accordance with the case of Bond Air Services Ltd v Hill[6], the onus is on the insurer to prove that a condition has been broken, not on the assured to prove compliance on his part with each and every stipulation. Halsbury's Laws of England (Fourth Edition Reissue, Volume 25 Paragraph 421) goes further in stating that:

> "It may well be that, if there is a question as to whether a contract of insurance has ever come into existence or begun to be operative, the assured has to prove the happening of any events necessary to its existence or operation, but where the question is as to the insurer's liability under an admittedly effective policy, the rule as to the burden of proof is axiomatic in insurance law."

The judge's ruling on this issue was, therefore, made without any evidential basis whatsoever and must in the circumstances be set aside, together with her ruling that Dr. Hadeed had failed to produce the documentation required for him to recover under the policy.

[36] On the basis of all of the above, I am of the view that all four of Dr. Hadeed's grounds of appeal should be allowed. I would accordingly allow the appeal in its entirety, set aside the orders made by the trial judge and make the following awards:

1. The payment by CLICO to Dr. Hadeed of the sum of $116,869.33 claimed by him as the quantum of the loss suffered by him consequent on the damage to his goods on account of the flood at his store on or about 28th October 2006.

2. Interest on the sum of $116,869.33 at the rate of 3% per annum from 28th October 2006 to the date of this judgment.

3. Prescribed costs in the court below on the sum of $116,869.33 and two thirds of this cost on the appeal.

[6] [1955] 2 QB 417.

4. Interest on the sums awarded at the rate of 6% per annum from the date of this judgment to the date of payment.

Mario Michel
Justice of Appeal

Davidson Kelvin Baptiste
Justice of Appeal

Gertel Thom
Justice of Appeal