COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp. No. 15 of 2020

B E T W E E N

CAMRY INVESTMENT COMPANY LIMITED

AND

JWJ VENTURES LIMITED

AND

WALTER J. MISSICK

AND

JANICE E. MISSICK

Appellants

AND

FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED

Respondent

BEFORE:	**The Honourable Sir Michael Barnett, P** **The Honourable Mr. Justice Isaacs, JA** **The Honourable Madam Justice Bethell, JA**
APPEARANCES:	**Mr. Harvey Tynes, QC with Ms. Roshar Brown, Counsel for the Appellants**
	Ms. Wynsome Carey with Mr. Terry North, Counsel for the Respondent
DATES:	**26 January 2021; 15 February 2021**

****

Civil appeal – Monies payable under a loan – Principal and interest payable - Written off amount - Litigation costs on an indemnity basis – Whether the principal payable includes the written-off

amount - Whether the Bank agreed to accept interest only payments – Whether an account ought to be taken of the litigation costs

The first and second appellants were customers of the respondent, while the third and fourth appellants are the directors and beneficial owners of the first and second appellants. In 2010 the respondent loaned the first appellant $620,385.60 at an interest rate of prime plus 3%; the loan amount was increased by $3,131.40 in 2012 and was secured by property owned by the appellants. Repayment of the loan was by way of blended monthly payments of $6,334.00 over 14 years.

The appellants defaulted on the loan and the respondent/plaintiff brought an action for all monies payable under the loan. In response, the appellants/defendants alleged that there was an agreement between them and the Bank whereby the Bank would accept interest only payments while they were in financial difficulty.

By judgment dated 27 December 2019 the trial judge found, inter alia, that as at 25 March 2019 the principal due by the appellants was $549,004.24; she also found that there was no agreement between the parties to accept interest only payments. She further found that as per the Commitment Letter the Bank was entitled to its litigation costs on an indemnity basis and an account of those costs ought to be taken before the Deputy Registrar.

The appellants appeal the judgment on the basis that: 1) the principal due as found by the judge contradicts the Bank's internal record which showed the balance due was $197,469.20 2) the Bank's internal notes contradicts the finding that there was no agreement to accept interest only payments and 3) the judge erred in her determination that the taking of an account into the loan transaction save for the issue of litigation costs was not warranted; this, they said, was contradictory and inconsistent with her further determinations.

Held: appeal dismissed. Costs to the respondent, to be taxed if not agreed.

Regarding the principal due, the Bank's internal record which showed $197,469.20 did not take into account the amount of $351,403.87 which the Bank had, for its internal accounting and business purposes, "written off". Counsel did not advance the argument that an amount written off was not, as a matter of law, recoverable by a lender. Nor did the appellants pursue the argument of promissory estoppel.

In relation to the learned judge's finding of fact that there was no agreement between the Bank and the appellants to accept interest only payments, there is no basis upon which this Court should interfere with this finding.

With respect to the litigation costs, the only issue for determination by the taxing master was the reasonableness of $104,493.18 claimed as litigation costs. Once a reasonable sum has been determined the Bank is entitled to add that amount to the appellants' loan, as per the Commitment Letter. There is no basis to fault the judge's approach on the issue of litigation costs.

The appellants' challenge to the learned judge's decision was based on alleged errors of fact, not errors of law. An appellate court will not interfere with the decision of a lower court unless it can

be demonstrated that no reasonable judge would have made the determination it did. That is not the case in this appeal.

Bahamasair Holdings Ltd v Messier Dowty Inc [2019] 1 All ER 285 applied

---

J U D G M E N T

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. This is an appeal by borrowers and guarantors against a judgment in favour of a lender for monies payable under a loan.

2. By a judgment delivered on 27 December 2019 Hanna-Adderley, J. awarded judgment in favour of the lender in the following terms:

> **"78. The Court having read the pleadings, having read and heard the submissions by Counsel for the Plaintiff and the Defendants, and having considered the applicable case law the Court makes the following Order:**
>
> **(1) The Plaintiff shall enter judgment against the Defendants on the principal sum as at March 25, 2019 of $549,004.24 less the litigation costs, together with interest on that principal sum at the rate of 7.25 percentum per annum and continuing at a rate of $39.22333 per diem as at March 25, 2019 and plus late fees in the sum of $19,693.57.**
>
> **(2) The Defendants shall deliver up within 60 days from the date hereof vacant possession of: and (sic) Lot No. 38 Amberjack Street, Caravel Beach Subdivision,**
>
> **i. Possession of all those Lots Nos. 5 and 5A, Bell Channel Bay Subdivision, Unit 2; Freeport, Grand Bahama;**

ii. Possession of all those Lots Nos. 58 and 59 Adventurer's Way, Freeport City Subdivision, Freeport, Grand Bahama;

iii. Possession of Lot No. 38 Amberjack Street, Caravel Beach Subdivision, Freeport, Grand Bahama.

(3) Bearing in mind the contractual agreement in the Mortgage and the Commitment Letter between the Plaintiff and the Defendants, the litigation costs are awarded to the Plaintiff to be taxed on an indemnity basis if not agreed."

3. The appellants have appealed that judgment. The Notice of Appeal is in the following terms:

"TAKE NOTICE THAT the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above—named Appellants on appeal from those portions of the Judgment of the Honourable Madam Justice Petra Hanna—Adderley given on the 27th day of December, 2019 in Common Law & Equity Division Action No. 2015/CLE/gen/FP/00095 whereby she determined at paragraph 62 thereof:-

'I am satisfied that as of March 25, 2019 the principal balance due was $549,004.24 and the interest due was $270,399.63, accruing at $39.22333 per day'

and at paragraph 67 thereof:—

'I find as a fact, that there was no agreement to accept interest only payments in the sum of $4,000.00'

and at paragraph 71 thereof:-

'I am satisfied that the taking of an account into the loan transaction, save for the issue of litigation costs, is not warranted'

and at paragraph 78 thereof:-

'(1) The Plaintiff shall enter judgment against the Defendants on the principal sum as at March 25, 2019 of $549,004.24 less the litigation costs, together with interest on that principal sum at the rate of 7.25 percentum per annum and continuing at a rate of $39.22333 per diem as at March 25, 2019 and plus late fees in the sum of $19,693.57.

(2) The Defendants shall deliver up within 60 days from the date hereof vacant possession of and (sic) Lot. No. 38 Amberjack Street, Caravel Beach Subdivision

i. Possession of all those Lots Nos. 5 and 5A, Bell Channel Bay Subdivision, Unit 2, Freeport, Grand Bahama;

ii. Possession of all those Lots Nos. 58 and 59 Adventurer's Way, Freeport City Subdivision, Freeport, Grand Bahama;

iii. Possession of Lot No. 38 Amberjack Street, Caravel Beach Subdivision, Freeport, Grand Bahama

(3) Bearing in mind the contractual agreement in the Mortgage and the Commitment Letter between the Plaintiff and the Defendants, the litigation costs are awarded to the Plaintiff to be taxed on an indemnity basis if not agreed'".

FOR AN ORDER that those parts of the said Judgment be set aside and that an order be made for an account to be taken pursuant to the provisions of Section 3 (1)(a) of the Money Lending Act Chapter 340 to determine What sum, if any, is owed by the First named Appellant to the Respondent and that the costs of this Appeal be paid to the Appellants by the Respondent.

AND FURTHER TAKE NOTICE that the grounds of this Appeal are as follows:—

(1) The learned Judge erred in coming to the conclusion that, as of March 25, 2019 the principal balance owed to the Respondent by the First named Appellant was $549,004.24. Such determination directly contradicts the internal records maintained by the Respondent which showed that the balance owed to the Respondent by the First named Appellant was $197,469.20 on the 25th March, 2019.

(2) The learned Judge erred in making the determination that there was no representation made to the Appellants that the Respondent would accept "interest only payments" for an unspecified period on the First Appellant's loan. The determination directly contradicts the internal record of notes made by Mr. Mark Gomez, a Senior Manager of the Respondent Bank as follows:—

> **'We indicated to them that we will accept $4,000.00 per month for the time being'.**

(3) The learned Judge erred in making the determination that the taking of an account into the loan transaction save for the issue of litigation costs was not warranted. Such determination by the Judge is inherently contradictory and is inconsistent with the learned Judge's further determination at paragraph 74 of the Judgment as follows:-

> **'I am satisfied that an account ought to be taken of the litigation costs before the Deputy Registrar to be taxed on an indemnity basis as contractually expressed, if not agreed'."**

4. At the outset of the hearing of the appeal, counsel for the appellants said:

> **"You may have noticed that in the appellants submissions there is no reference to cases at all. And that is because I do not think there is likely to be any dispute on the law for your consideration, at least as I see it now.**
>
> **Also, I hope it would be a welcome sign of relief, I do not intend to refer to many documents in the record, as I believe the key issue at the end of the day is how the**

learned judge computed the amount due to be paid by the appellants to the respondent."

5. In the circumstances I will set out the material facts that gave rise to this action.

6. The respondent, FirstCaribbean International Bank (Bahamas) Limited is the successor to CIBC Bahamas Limited (formerly Canadian Imperial Bank of Commerce) following that Company's merger with Barclays Bank PLC in 2002. The respondent is sometimes referred to in this judgment as "the Bank".

7. The first appellant, Camry Investment Company Limited ("Camry"), was a customer of the Bank's Freeport Branch and maintained facilities therein to which the respondent made loans. The second appellant, JWJ Ventures Limited ("JWJ") is also a customer of the Bank and maintained facilities therein to which the Bank made advances. Walter Missick and Janice Missick are the Directors and Beneficial Owners of Camry and JWJ.

8. In 2010 the Bank agreed to lend and did lend to Camry the sum $620,385.60 to consolidate two loan facilities of Camry and the loan facility of JWJ to allow for smaller monthly payments. The interest rate was prime rate plus 3% per year. The said loan was increased by very small amounts totaling $3,131.40 in the year 2012. The loan was secured by property owned by the 4 appellants. The loan was repayable by blended monthly payments of $6,334.00 representing principal and interest amortized over 14 years.

9. It was an express term of the said loan that the appellants would make monthly payments to the Bank to keep the account in good standing.

10. There is no dispute that the appellants were in default of the loan. The appellants alleged that there was an agreement between them and the Bank that whilst they were in financial difficulty the Bank would accept only interest payments until Camry "catch itself". In paragraph 67 of her Judgment the judge found that there was no such agreement and that is a finding of fact which is being appealed.

11. As the appeal does not involve any dispute as to law or the application of agreed law to the facts, our role as an appellate court is very limited.

12. As counsel for the appellants said at the hearing, **"…you will find that my arguments would be essentially based on -- well, would be more arithmetic more than the law or the facts".**

13. In **Bahamasair Holdings Ltd v Messier Dowty Inc** [2019] 1 All ER 285 the Privy Council set out the principle as to the approach of an appellate court as to findings of fact by a trial judge. It said:

> **"1. '… [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 …'—Central Bank of Ecuador v Conticorp SA [2015] UKPC 11, [2016] 2 LRC 46, [2016] 1 BCLC 26, para [5].**
>
> **2. Duplication of the efforts of the trial judge in the appellate court is likely to contribute only negligibly to the accuracy of fact determination—Anderson v City of Bessemer, cited by Lord Reed in para [3] of McGraddie.**
>
> **3. The principles of restraint 'do not mean that the appellate court is never justified, indeed re-quired, to intervene.' The principles rest on the assumption that 'the judge has taken proper advantage of having heard and seen the witnesses, and has in that connection tested their evidence by reference to a correct understanding of the issues against the background of the material available and the inherent probabilities.' Where one or more of these features is not present, then the argument in favour of restraint is reduced—para [8] of Central Bank of Ecuador."**

14. It is against that background that I consider the grounds of appeal.

Ground One - The learned Judge erred in coming to the conclusion that, as of March 25, 2019 the principal balance owed to the Respondent by the First named Appellant was $549,004.24. Such determination directly contradicts the internal records maintained by the Respondent which showed that the balance owed to the Respondent by the First named Appellant was $197,469.20 on the 25th March, 2019.

15. The background to this claim is that the Bank records reflected that the loan balance was $197,469.20. The sum however did not take into account that the Bank had, for its own internal accounting and business purposes, "written off" the amount of $351,403.87 from the sum owed by the appellants to the Bank. In paragraphs 59 to 62 the judge explained the nature of this discrepancy and the basis of her finding that the principal owed was $549,004.24.

16. She said:

> **"59. The Defendants' Defence with respect to the amount due, if any, on the loan by the First Defendant relies heavily on the argument that there is an unexplained discrepancy between the Loan Statement, the Cover Sheet and the sum claimed in the Amended Statement of Claim. As mentioned at paragraph 24 above the Loan Statement at page 37 reflects the Account balance as at 7-04-17 as being $458,139.12. Page 37 reflects a "charged off" amount of $351,535.04. Mr. Gomez's explanation was simply that this discrepancy arose as a result of the Plaintiff's accounting policies whereby a portion of the loan in the amount of $351,535.04 was charged off/written off, for accounting purposes. When questioned by the Court about this policy Mr. Gomez explained further that the charging off exercise did not change anything for the client, it was only done for internal accounting purposes and for the purposes of the Plaintiff's report to its shareholders. Page 40 of the Loan Statement reflects an outstanding principal balance of $197,469.20 due as at 25-03-19. Is there any correlation between the Cover Sheet, the Loan Statement and the Amended Statement of Claim? Mr. Gomez stated under cross-examination that the amount of principal outstanding and due on the account was the sum reflected in the Cover Sheet of $549,004.24. Mr. Tynes QC was of the view that this explanation made no sense. That the $549,004.24 which Mr. Gomez said was still due and owing was different from the $197,469.20 stated in the Loan Statement as of March 25, 2019 and the "pay off" sum on the Cover Sheet being $819,403.87. But if you add the charge off amount of $351,535.04 reflected on page 38 of the Loan Statement to the principal balance of the loan in the sum of $197,469.20 as reflected on page 40 of the Loan Statement, the total principal balance outstanding as at the 25-03-19 as reflected on the Cover Sheet is $549,004.24. There is a correlation between the figures reflected on the Loan Statement and the Cover Sheet. The Loan Statement does not reflect the interest on the loan which accrues every day the loan remains outstanding.**

The $819,403.87 reflected on the Cover Sheet takes into account the accrued interest on the loan of $270,399.63, and when added to the principal of outstanding of $549,004.24 brings the total payoff sum due to $819,403.87 as at 25-3-19.

60. Writing off bad loans or bad debts from the books or accounts is a common practice in the field of business. The Loan Statement does not reflect a deposit by the Defendants of $351,535.04 to the account, which would have drastically reduced the principal balance. It stands to reason then that the $458,148.12 reflected on page 37 of the Loan Statement was the principal sum due and owing at 10-04-17 before the internal charge off. It was also argued by Mr. Tynes QC that the Cover Sheet was introduced by the Plaintiff "to discredit its own internal records which do not support its claim in the Statement of Claim" but I see no evidence of this. Ms. Carey submitted that you cannot determine the amount outstanding without the loan Cover Sheet which provides not only the interest, but the interest rate, daily interest charged and last payment to the principal balance, which reflects all of the particulars required under Order 73 of the Rules of The Supreme Court. Mr. Gomez's evidence was that when a client requests a Loan Statement the client is given the Cover Sheet. I accept the evidence of Mr. Gomez on this point.

61. Mr. Tynes QC argued that the amount due by the Defendants on the Cover Sheet, the Loan Statement and the Amended Statement of Claim were all different. The Amended Statement of Claim reflects that the amount due therein was calculated as at January 29, 2016 on or about when the Amended Statement of Claim was filed. That figure would be different from the figure calculated as at March 25, 2019, as it would be different if the amount outstanding was calculated as of today's date. Mr. Gomez asserted that the Plaintiff's records were accurate and, as was submitted by Ms. Carey, the Defendants have not adduced any evidence to establish

that the records are flawed or inaccurate. The Plaintiff's evidence on the accuracy of its records is accepted.

62. I read the Witness Statements of Mr. Gomez very carefully, I observed his demeanor as he gave his evidence, he withstood the rigors of cross-examination and I found him to be a credible witness. I am satisfied on the evidence of Mr. Gomez and I accept the submissions of Ms. Carey, that the Cover Sheet is a relevant part of the loan history of a customer of the Plaintiff. I also accept that the discrepancies in the amounts outstanding on the loan on the Cover Sheet, the Loan Statement and the Amended Statement of Claim have been adequately explained by Mr. Gomez and by the records produced by the Plaintiff. Mr. Gomez also adduced evidence that established that there were no unauthorized debits in the sum of $4,000.00 from any of the First Defendant's accounts. I am satisfied that as at March 25, 2019 the principal balance due was $549,004.24 and the Interest due was $270,399.63, accruing at the rate of $39.22333 per day. These account balances would quite logically be affected if the Plaintiff by its actions are estopped from applying its strict legal rights under the Mortgage which I turn to now."

17. This is perfectly understandable and there is no reason to interfere with that finding of fact. The judge accepted the evidence of Mr. Gomez as to the determination of the amount. Counsel for the appellants did not advance the argument that sums owed by a customer but written off by a lender for accounting purposes are not, as a matter of law, recoverable by a lender.

18. The appellants did not pursue the argument of promissory estoppel as even on their own evidence the Bank never represented to them that if they paid interest only the Bank would not seek to recover the principal owed.

19. In my view ground one cannot be sustained.

Ground Two - The learned Judge erred in making the determination that there was no representation made to the Appellants that the Respondent would accept "interest only payments" for an unspecified period on the First Appellant's loan. The determination directly contradicts the internal record of notes made by Mr. Mark Gomez, a Senior Manager of the Respondent Bank as follows:—

"We indicated to them that we will accept $4,000.00 per month for the time being".

20. This is an inconsistency in the evidence. The internal note says one thing and the oral evidence of Mr. Gomez said another. This inconsistency in the evidence is a matter for the trial judge as the tribunal of fact. The trial judge dealt extensively with this dispute in her discussion of the evidence at paragraphs 63 to 67 of the judgment. She said:

> **"63. The other main thrust of the case for the Defendants, or the partial defence as referred to by Mr. Tynes QC, is that the Plaintiff agreed to accept $4,000.00 per month as an interest only payment on the Mortgage Loan from the Third and Fourth Defendants and having done so the Defendants relied on this agreement and did not pursue alternative financing, nor did they actively try to sell the Mortgaged Property. That in the circumstances the Plaintiff agreed to suspend its legal rights under the loan agreement. I have carefully considered not only the third page of the undated contemporaneous notes made by Mr. Gomez but all 5 pages of the notes as was submitted by Ms. Carey. Mr. Tynes QC highlights a portion of the notes found on page 3 in which Mr. Gomez records that the Plaintiff will accept $4,000.00 per month from the Third and Fourth Defendants "for the time being", but as pointed out by Ms. Carey, the note goes on to say the following:**
>
> > **'we are aware that $4k per month is not sufficient to service the loan as it would push the expiration of the loan in excess of 25 years. It was expressed to the client that this is not bankable and we will pursue possession of the premises to avoid any delay should we find a sale for any of the properties.'**
>
> **64. There is no mention by Mr. Gomez in any of the 5 pages of notes of the Plaintiff's willingness or agreement to accept interest only payments in the sum of $4,000.00**

or in any other sum. Mr. Tynes QC is correct that there was no evidence as to the specific amount needed monthly to cover the interest but surely Mr. Gomez would have specified what the interest payment was, that is, what portion of the monthly payment of $6,334.00 represented the interest if he had agreed to accept interest only payments. The only time that interest only payments were raised was during the discussion between the Third Defendant and Ms. Smith which was rejected by Mr. Gomez on the same day that the issue was raised.

65. I also looked to the evidence of Mr. Missick under-cross examination. His evidence as to the actual agreement to pay interest only was vague and if such an agreement was made between Mr. Gomez (sic) and his wife, his evidence does not support this. Mrs. Missick did not give evidence in this case. The evidence given by Mr. Gomez on this issue is preferred.

66. A review of the Loan Statement reflects the consistent failure by the First Defendant to meet the monthly payment starting from July of 2011 seen at page 4 of the Loan Statement and continuing, with the exception of a few months, for the duration of this loan. At page 34 the last payment on this account by the First Defendant was made on 29-07-16 in the sum of $4,000.00. Other than the application of the insurance proceeds no other payments have been made to the account.

67. For these reasons and having accepted the submissions of Ms. Carey, I find as a fact, that there was no agreement to accept interest only payments in the sum of $4,000.00. Even if there was such evidence, there is no evidence before the Court that the Defendants paid $4,000.00 per month for the balance of the duration of the loan (the Loan Statement bears this out), and furthermore, such an agreement if there was one would have amounted to a deferral of the principal payments only. The principal would have remained outstanding and still due under the Mortgage.

21. Again, there is no basis upon which an appellate court should interfere with this finding by the trial judge that there was an no agreement to accept interest only payments in the sum of $4,000.00 per month. She considered all of the evidence including the inconsistencies referred to by counsel for the appellants.

22. Furthermore, as I pointed out earlier, this agreement even if it existed did not mean that the Bank would not require payment of the principal and the term "until they could catch themselves financially" was too vague as in any event to be enforceable.

23. This ground has no merit.

Ground Three - The learned Judge erred in making the determination that the taking of an account into the loan transaction save for the issue of litigation costs was not warranted. Such determination by the Judge is inherently contradictory and is inconsistent with the learned Judge's further determination at paragraph 74 of the Judgment as follows:-

"I am satisfied that an account ought to be taken of the litigation costs before the Deputy Registrar to be taxed on an indemnity basis as contractually expressed, if not agreed".

24. In my judgment, this is a misinterpretation as to what the judge had determined.

25. In paragraph 71 of the judgment she said:

> **"71. With respect to the Defendants' request for the taking of an account between the Plaintiff and Defendants regarding the loan transaction, having called upon the Plaintiff to produce a full and current history of the mortgage loan, which resulted in the entering into evidence of the Cover Sheet and the Loan Statement and current information on all accounts operated the Defendants', and the Defendant having had the opportunity to cross-examine Mr. Gomez and Ms. Bandelier I am satisfied that the taking of an account into the loan transaction, save for the issue of litigations costs, is not warranted."**

26. Later, at paragraph 74, she said:

> **"74. I am satisfied by the wording, the construction, of Clause 4.13 and Article 1.5 of the Commitment Letter, the principles set forth in paragraph 58 above by the Court in the Gomba case supra and, in part, the submissions of Ms. Cary on this issue, that the Plaintiff is entitled to**

> **recover non-litigation and litigation costs on an indemnity basis and to add it to the mortgage loan. The litigation costs total as at March 25, 2019 $104,493.18 and are substantial. Litigation fees even contractually expressed in a deed to be recoverable on an indemnity basis must however be incurred reasonably and must be bona fide. I am of the view the Defendants were entitled to raise the issue of their reasonableness once the current loan history was entered into evidence even if the same had been provided at an earlier date. I have a difficulty with accepting that a Mortgagee can add litigation costs to the Mortgagor's account in any amount without question or oversite by the Court if suspected of being unreasonable. The Mortgagee will always take the position that the legal costs were reasonably incurred. There must be some oversite by the Court. I do not accept that such litigation costs can only be debited from the Mortgagor's account if they are taxed costs. In order to determine whether they were reasonably incurred or not I am satisfied that an account ought to be taken of the litigation costs before the Deputy Registrar to be taxed on an indemnity basis as contractually expressed, if not agreed."**

27. The only issue was the reasonable amount of the litigation costs. To this end the judge held that that sum of $104,493.18 should be taxed by a taxing master as for its reasonableness on an indemnity basis. Once that reasonable sum has been determined, it is that sum which the Bank is entitled to add to the amount owed to it by Camry.

28. As to amounts owed by the Bank to the appellants in respect of interlocutory costs orders made in their favour, those taxed costs can always be deducted from the monies owed by the appellants to the Bank.

29. That is not a general accounting which the appellants sought and which the judge for the reasons expressed by her found to be unnecessary.

30. I see no basis for faulting that approach by the trial judge as to resolving the issue of litigation costs.

31. As pointed out earlier, this appeal does not assert that the judge made any error of law. It challenged the arithmetic by which the judge came to determine the amount owed. An

appellate court will not set aside that determination unless it can be demonstrated that no reasonable judge could have made the determination that it did. The trial judge cogently explained how she determined the amount owed and I see no basis for setting aside that determination as plainly wrong.

32. In the result this appeal is dismissed. The appellants are to pay the respondent's costs, to be taxed if not agreed.

The Honourable Sir Michael Barnett, P

33. I agree.

The Honourable Mr. Justice Isaacs, JA

34. I also agree.

The Honourable Madam Justice Bethell, JA