

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 043 OF 2024
[Suva Civil Action No. HBC 199 of 2020]

BETWEEN : **SHAN ALI** *Appellant*

AND : **BANK OF SOUTH PACIFIC LIMITED** *Respondent*

Coram : Prematilaka, RJA
Morgan, JA
Andrée Wiltens, JA

Counsel : Mr. M. Saneem for the Appellant
: Ms. S. Devan for the Respondent

Date of Hearing : 06 May 2025

Date of Judgment : 29 May 2025

JUDGMENT

Prematilaka, RJA

[1] I agree with the reasons and orders of Morgan, JA.

Morgan, JA

Introduction

[2] This is an appeal against the judgment of a High Court Judge (“the Judge”) delivered in the High Court in Suva on the 11th March 2024 wherein the Judge ordered that the

Appellant's claim was declined and dismissed with costs against the Appellant in the sum of \$2,500.00.

- [3] The Appellant, an Accountant by profession was at all material times a customer of the Respondent and was the holder of a personal BSP Gold Mastercard under an account with the Respondent numbered 151635. The card had a credit facility of F\$20,000.00 and a daily limit of F\$4,000.00. The Appellant held the card subject to the terms and conditions contained in two documents namely a "BSP Mastercard Terms and Conditions and Credit Card Contract Booklet" ("the Mastercard Booklet") and a letter of offer dated 15 November 2017 issued by the Respondent to the Appellant.
- [4] The Appellant contended that he had used his card to facilitate stock trading online through an entity called Fortrade and had made a profit selling that stock. He further alleged that on the 27th of June 2019 he had attempted to conduct a trade worth US\$5000 using his card but that as a result of a "technical glitch" on the part of the Respondent the transaction was not able to be completed and the Appellant thereby lost US\$9,376.71 in equity and US\$6,250.00 in profits that he would have gained from the transaction but for the "technical glitch." The Appellant stated in his Statement of Claim that the particular transaction the Plaintiff was contemplating involved "futures".
- [5] The Appellant subsequently sued the Respondent by Writ of Summons alleging that the Appellant suffered the alleged loss due to negligence and/or breach of a fiduciary duty owed by the Respondent to the Appellant and/or breach of the contractual provisions set forth in the terms and conditions of the Mastercard Booklet.
- [6] The Appellant claimed judgment in the sum of US\$15,626.71 by way of special damages; and general damages for breach of contract, costs and interest.
- [7] The Respondent filed a Statement of Defence denying all allegations and as set out by the Respondent in its submissions before this Court pleaded inter-alia:
- “(i) that the credit card's operations and use were subject certain terms and conditions which the Appellant was well aware of.*
 - (ii) the terms and conditions for the use and operation of the BSP Mastercard were found in the "BSP Mastercard Terms and Conditions" and "Credit*

Card Contract Booklet” and Letter of Offer dated 15 November 2017 issued by the Bank.

- (iii) *the Appellant was aware that the credit card facility was restricted for commercial use such as purchasing of “stock” and thereby conducted transactions for purchasing of stock (wheat ZW) in breach of the terms and conditions of use of the credit card.*
- (iv) *the Appellant was aware or ought to have been through the terms and conditions of the use and operation of his credit card facility that for any purchase of goods and services outside Fiji, the Appellant was required to comply with Fiji’s regulatory requirements as such obtaining approval from the Reserve Bank of Fiji and obtain a Tax Clearance Certificate.*
- (v) *the Appellant had breached the terms and conditions pertaining to the use and operation of his credit card as such the Bank was not liable for the loss and damages the Appellant suffered.”*

The High Court Proceedings

[8] The hearing of the matter was conducted and concluded before Nanayakkara, J on the 1st December 2022. The Appellant gave evidence on his own behalf and did not call any other witnesses. The Respondent called one witness who was the head of internal operations of the Respondent bank. At the end of the hearing Nanayakkara, J allowed the parties time to file written submissions and noted that judgment would be delivered on the 10th March 2023. For reasons that are not explained Nanayakkara, J did not deliver a decision and the matter was called before Justice S. Qica on the 10th August 2023 when Counsel for the parties advised the Court that submissions had been filed and that the Court could rely on the transcript and the written submissions and rule accordingly. The impugned judgment was then delivered on the 11th March 2024.

The evidence

[9] The Judge firstly summarised the Appellants and the Respondents evidence before the High Court, the salient elements of which were:-

- (i) The Plaintiff stated that he had used his Mastercard to purchase stock abroad. He made several attempts (40 to 50 attempts) between 26/06/2019 and 27/06/2019 from 5pm to 7pm to purchase stock and they were declined. He contacted the Respondent and was advised that the card status had been revised to VIP status and to try again and the transactions would go through. The transactions didn’t go through and he considered that the reason for the

transactions not going through was due to a “technical glitch”. He considered that there was an issue with the IT Section of the Respondent and not with the merchant. He further contended that he lost US\$6000 in profit because of the failed transactions and that he claimed that loss from the Bank. He did not adduce any evidence to substantiate his loss.

In cross-examination he confirmed that he was well aware of banking and financial transactions and that he was aware of the terms and conditions of the credit card facility granted to him by the Respondent. He was aware that overseas remittances of a certain limit had to be approved under the Exchange Control Act. He was also aware that overseas remittances had to be declared to the Fiji Revenue and Customs Services because any gain from overseas remittances had to be declared for tax purposes. He agreed that trading in stock was not a permissible transaction under the terms and conditions of the Mastercard Booklet but he considered that he wasn’t buying stock but was using the Mastercard to fund his account and not purchase stock but to retain his margin. Further he didn’t agree that trading in stock on line was not permissible under the Mastercard agreement as the Respondent had honoured similar transactions online previously. He was aware and agreed that Fiji government regulatory approvals would be required to trade in stock online but because transactions were not declined and were going through he was not required to get that approval. In re-examination he repeated that he did not consider that purchasing stock online and selling it was a business transaction in terms of the Mastercard conditions as he was basically funding his account. He confirmed that he was aware of the daily limit of F\$4,000.00 on his account.

- (ii) The Respondent’s evidence on the other hand was that the Mastercard was to be used for personal use such as for travel, accommodation, meals, beverages, entertainment and personal expenses and that trading in stock online using the credit card facility would be classified as a corporate or business transaction which were prohibited under the terms and conditions of the Mastercard Booklet. The Appellant had not advised the Bank that he was using the Mastercard to purchase stock online. Had he done so, the Respondent would have advised the Appellant to obtain the necessary approval from the Reserve

Bank because of the requirements under the Exchange Control Act. It was further submitted that payments made outside Fiji are declared overseas remittances and that by making payments for stock to the Fortrade.com platform the Appellant was essentially making an overseas remittance.

The Respondent's witness then noted when referring to the transaction activity log relating to the Appellant's card that between the 27th and 28th June the Appellant made 45 transaction attempts and they were in US Dollars. The transactions were declined because they exceeded the daily limit of the card of F\$4,000.00 per day. He noted that the Appellant made contact with the Respondent when the transactions were declined but didn't inform the Respondent of the nature of the transactions. To assist the Appellant the card was given VIP status which removed the F\$4,000.00 daily limit and allowed the Appellant to use the full amount that was available on the credit card (subject to the credit card facility of F\$20,000.00) which would have enabled the Appellant to conduct the transactions. The VIP status was activated on the 27th June 2019 at about 7:50pm until midnight on the 28th June 2019. It was activated for only 24 hours to protect the customer from risks. The Appellant did not conduct any transactions after 7:50pm on the 27th June. The next transaction that the Appellant conducted was on the 28th June which was a small iTunes transaction at 10:06pm that went through and then another Fortrade transaction at 10:53pm for US\$2,000.00 which was approved because the VIP status was still in place. The Appellant tried other transactions on the 29th June at around midnight but at that time the VIP status had lapsed and another US\$3,000.00 transaction was declined as the card had exceeded the daily limit of F\$4,000.00.

The witness stated that the Appellant had not informed the Respondent as to the exact nature of the transactions and the Respondent's staff did not enquire with him as they assumed he was conducting normal purchases according to the terms and conditions of the Mastercard which permitted personal use only. The transactions conducted by the Appellant on the 27th June were declined because they exceeded the daily limit and this was communicated to the Appellant by phone and email.

The witness denied that there was a software glitch as alleged by the Appellant. The transactions were declined because they exceeded the daily limit.

In re-examination the Respondent's witness stated that the transaction activity history log did not show that the Appellant tried to conduct 10 more transactions after the VIP status was put in place.

The Issue

[10] The Judge considered that the issue he was required to determine was - "Whether the online transaction via Mastercard of Defendant bank was conducted by the Plaintiff between 27/6/19 and 28/6/19 was a legitimate transaction as per the terms and conditions of BSP Mastercard or otherwise?"

Undisputed facts

[11] In analysing the evidence the Judge found that the following was undisputed based on evidence and documents adduced at the trial:

- "i. The plaintiff is a customer of the Defendant bank with regard to master card facility with a limit of \$20,000.*
- ii. The Plaintiff was offered the facility on 15th November 2017 by the Defendant bank and the offer was accepted by the Plaintiff on 17th November 2017.*
- iii. The terms and conditions of the use of the master were contained in the BSP Master Card Terms and Conditions, Credit Card Contract Booklet and Letter of Offer dated 15th November, 2017.*
- iv. The Plaintiff had used the Master Card facility several times to purchase and sell stocks online through Fortrade.com. That the Plaintiff's initial use of the Master Card to purchase and sell stocks online were successful and also made him a profit.*
- v. The plaintiff's use of his Master Card to purchase and sell stocks online on 27th & 28th June, 2019 were declined and resulted in loss.*
- vi. The Plaintiff claimed that the Defendant bank although having honored previous similar transactions online, failed to honour the online transaction on 27th & 28th June 2019 and that resulted in his loss of profits.*
- vii. The Plaintiff then filed the current claim against Defendant bank as per the writ of summons and statement of claim."*

Analysis of evidence, facts and issue

[12] The Judge considered that the following terms of the Mastercard Booklet were relevant to determining the matter.

“i. Usage - *Your card should only be used for miscellaneous requirements, which include travel and accommodation. It is not meant to be used for business import, service payment, capital repatriation or other similar type business or personal obligation. You are required to inform the Bank if you intend to use your credit card abroad. You may do so by visiting any branch or contacting our Customer Care Centre.*

ii. Regulatory requirements - *Use of the Card to pay for goods and services outside of Fiji is considered an overseas remittance. Under the Exchange Control Act 1950, the Reserve Bank of Fiji Act 1983 and Income Tax Act 2015 (as amended from time to time),*

- *there are Balance of Payment reporting requirements, which must be satisfied.*
- *business entities (and individuals) are prohibited from remitting overseas more than FJD\$120 000 per calendar year (or such other lesser limit as may be imposed by law) for non-import payments without a Tax Clearance Certificate.*

As such we are obligated to; monitor Card usage, make enquiries into remittance activities, request supporting documentation, and ensure the timely completion and lodgment of prescribed forms.

Failure to comply with the above could result in your card services being suspended or withdrawn. Please contact Customer Care Centre should you have any questions in this regard (Emphasis mine)”

[13] After analysing the evidence set out above the Judge found based on the Mastercard Terms and conditions and the evidence in its totality that the Appellant’s use of the card to buy and sell stock online was a business transaction or overseas remittance which was prohibited under the Mastercard terms and conditions. The Judge noted the Respondent’s argument that although he was aware of the terms and conditions of the Mastercard he considered that the transactions in question were not for business purposes. He claimed that he was not purchasing stock, but rather using the Mastercard to fund his account or pay for the service. He considered it was a payment made to his account rather than to purchase wheat allowing him to maintain his margin. The Judge considered this claim to be unfounded and misguided. The Judge considered he was using the Mastercard to make a profit and found further that the

online transactions required the agreement of the Respondent and approvals under the Exchange Control Act 1950 and the Reserve Bank Act of 1983 and the Income Tax Act of 2015. The Judge found that the Appellant had used the MasterCard to perform online business transactions, including purchasing and selling stock for profit without prior clearance from the Respondent or the applicable authorities. The judge therefore found that all of the transactions that occurred prior to and on the 27th and 28th, June 2019 were prohibited and illegal. The Appellant did not come to Court with clean hands and the Court would not assist a business transaction that was contrary to the law.

The Appeal

[14] The Appellant now appeals that judgment to this Court on the following grounds:

- “1. The Learned Trial Judge erred in law and in fact in failing to find that the Respondent did not advise the Appellant that the transaction was being stopped due to breach of terms and conditions.*
- 2. The Learned Trial Judge erred in law and in fact in holding that the Respondent acted within the Terms and Conditions of the Mastercard.*
- 3. The Learned Trial Judge erred in law in holding that the Appellant did not comply with the Exchange Control Act, Reserve Bank of Fiji Act and Tax Act when the Respondent failed to prove the same.*
- 4. The Learned Trial Judge erred in law and in fact in failing to find that the Respondent could not complete the transaction due to a system error on its part.*
- 5. The Learned Trial Judge erred in fact when he did not consider that the Respondent did not give notice of breach to the Appellant and it only came up with the excuse when the matter reached Court.*
- 6. The Learned Judge erred in law and in fact in dismissing the Appellant’s claim and awarding costs against the Appellant in the sum of \$2,500.00.”*

[15] The Appellant seeks orders that the judgment be set aside and damages be “re-assessed” and for costs.

[16] Both parties filed written submissions and made oral submissions at the hearing.

[17] I did not find the Appellant’s Written Submissions, particularly helpful. They were not in any particular order and were difficult to follow. I am grateful to the counsel for the Respondent for filing orderly and properly particularized written submissions.

[18] I will now deal with the grounds of appeal and the submissions made thereon.

Grounds 1 and 5 – Failure of Respondent to give notice of decline of card due to breach

[19] With regard to Ground 1, the Appellant appears to submit that the Respondent was obliged under the terms and conditions of the Mastercard Booklet to monitor card usage, make enquiries into remittance activities, request supporting documents, ensure the timely completion and lodgement of prescribed forms and that failure to comply could result in card services being suspended or withdrawn. There was no evidence of any such enquiries or requests or of any form being completed or lodged. There was no evidence of any suspension or withdrawal of services which it is suggested could have been carried out. It was submitted that this represents non-compliance by the Respondent with the Master Card Agreement and the Respondent therefore could not have raised the defence it did in the High Court.

[20] With regard to Ground 5, the Appellant submits that the facts did not involve the Respondent giving the Appellant any notice that the Appellant was in breach of any law or the terms of the usage of the Mastercard. Further at no point did the Respondent stop him from performing the transactions with Fortrade.com.

[21] It is submitted that the Judge obfuscated the facts of the case in failing to correctly evaluate the correspondence tendered in evidence in support of the claim. It is submitted that in its initial correspondence, the Respondent did not rely on any legislation to deny the transaction nor did it highlight any terms or conditions of the Mastercard agreement to reject the transaction. He submits that it couldn't because by its own conduct the Respondent confirmed that later transactions to the same website had been allowed and cleared. The Appellant concludes that this is not a case where the Respondent denied the Appellant's transactions for purported breaches of the Mastercard terms and conditions. All the evidence it is submitted points to an IT system error and that the Judge erred in the facts he relied upon to reach his decision.

[22] On the other hand, the Respondent submitted in its written submissions as follows.

“5.4. The evidence elicited during the cross-examination of PW1 sufficiently demonstrated that the Appellant was fully cognizant of and comprehended the terms and conditions, governing the use of his Mastercard. The Appellant, in his evidence, explained that whenever transactions were declined, he would contact customer care. The Bank's customer care

service would inform him if he had exceeded his daily transaction limit. He further acknowledged that, on 27 June 2019, at his own request, the Bank upgraded his Mastercard to VIP status, thereby removing the daily transaction limit and instead imposing a limit in accordance with the credit available on his card, which was F\$20,000.

- 5.5. The appellant was fully aware of the restrictions applicable to his Mastercard, including, but not limited to, monetary limits, restrictions on the purpose of use, and any other legitimate conditions imposed by the Bank. Accordingly, any violation of these restrictions would result in the Bank's right to take immediate action, including suspending, cancelling, or dishonouring any transactions that had been processed or were contemplated by the Appellant in contravention of such restrictions*
- 5.6. As per the terms and conditions of use, the Bank retained the right to cancel the Mastercard without notice to the Appellant under clause 4.6 (Refer page 246 of the Appeal Record). The Bank also reserved the right to refuse a proposed transaction under clause 13.3 of the Credit Card contract (Refer page 261 of the Appeal Record).*
- 5.7. It is further submitted that the Appellant has failed to invoke any contractual provisions to support his claim that the Bank was obligated to provide prior notice before declining any transactions.*
- 5.8. Grounds 1 and 5 are therefore without merits and must be dismissed."*

Discussion

- [23] I have great difficulty following the Appellant's above grounds or submissions. The obligations which the Appellant refers to in the Mastercard Booklet relate to the Respondent's obligations generally in order to comply with regulations relating to the use of cards to pay for goods and services outside of Fiji. I do not accept the vague submission that because there was no evidence of any requests or enquiries or of any form being completed or suspension of the use of the card this amounted to non-compliance by the Respondent with the terms of the Mastercard. The Respondent's non compliance was not an issue before the High Court.
- [24] I accept the Respondent's submissions in regard to these grounds and in particular that the Appellant has failed to put forward any contractual provisions to support the contention that the Respondent was obliged to provide prior notice to the Appellant before declining transactions.
- [25] I do not accept that the Judge erred by failing to properly evaluate the evidence in reaching his decision.
- [26] I have concluded that Grounds 1 and 5 are misconceived and should be dismissed.

Ground 2 – The Judge erred in holding that the Respondent acted within the terms and conditions of the Mastercard

[27] The Appellant in his written submissions advanced the submissions in paragraphs (22) to (24) above for both grounds one and two. I have dealt with these submissions above and don't propose to say anything further.

[28] The Respondent in its submissions submits that this ground is overly broad and has not been properly formulated. I agree. Indeed the Judge did not make this finding in his judgement. I consider that this ground has no merit and should be dismissed.

Ground 3 - Non-Compliance with Exchange Control Act, Reserve Bank of Fiji Act and Tax Act.

[29] The Appellant submits that the Respondent had approved transactions with the stock trading entity Fortrade the day prior to and the day after the transactions in contention were declined on the 27th June 2019. The Respondent it is submitted therefore cannot claim that the transactions were in breach of the terms and conditions of the card. The Appellant submits that the Respondent having acquiesced to the Appellant's transaction is now bound by such acquiescence. The Appellant also submits that it was for the Respondent to prove that the Appellant had not obtained the required statutory approvals.

[30] The Respondent on the other hand submitted that the Appellant acknowledged in his evidence using his Mastercard to facilitate stock trading. Whether the payments were directly applied to purchasing stock or to fund the account established on the Fortrade.com platform for trading purposes, it is evident from the Appellant's conduct he was actively engaged in online trading. Further the Appellant acknowledged that any such payments made to offshore entities were subject to regulatory approvals. The Appellant understood specifically it is submitted that approvals were required from the Reserve Bank of Fiji in accordance with the provision of the Exchange Control Act and the Income Tax Act. The Respondent submits that having evaluated the evidence, the Judge correctly held based on the totality of the evidence that the use of the card by the Appellant to buy and sell stock on line was a business transaction or overseas remittance which was prohibited under the terms of the card. Further that the online transactions required the approval of the Respondent and other stakeholders under the relevant Acts referred to above.

- [31] It is further submitted that in view of these findings the Judge was correct in holding based on established legal authority that the Appellant's loss would have to lie where it fell.
- [32] The Respondent submits finally that no evidence was presented by the Appellant to demonstrate that the Respondent was aware his prior transactions related to stock purchases nor the intended purpose of the transactions the Appellant sought to execute on the 27th and 28th June 2019. It is submitted that the Respondent on the other hand provided evidence confirming that online credit card transactions within the permissible daily limits were processed and that transactions exceeding the daily limit were declined as the Appellant had exceeded the prescribed credit card limits for those days. The Respondent concludes that the payments made by the Appellant were for the purchase of stock or to raise funds on the Fortrade.com platform and were therefore payments made outside Fiji and were classified as "overseas remittance" under Fiji Law. As such the Judge was correct in holding that the Appellant was required to obtain the appropriate statutory approvals which were not in place at the time of the transactions.

Discussion

- [33] Firstly with regard to the Appellant's submission that the Respondent had acquiesced by allowing transactions prior to the transactions in contention and could not therefore claim the transactions were in breach of the conditions of the card, the Judge properly and adequately considered this at paragraph 16 of his judgement when he found based on the evidence before him that:-

"Some of the Plaintiff's transactions went through because they were of little value or amount and did not meet the layer of security requirements. Because the bank conducts millions of transactions, it is possible that it was unable to supervise each one. There are some grey areas that need to be clarified in order to fulfil regulatory standards, which is why some of the Plaintiff's previous transactions went through. However, simply because past purchases were made does not constitute legitimate credit card use."

- [34] I find that the Judge was correct in reaching this conclusion.
- [35] It was not for the Respondent to prove that the Appellant had obtained the necessary statutory approvals to conduct the overseas transactions online. The Appellant had acknowledged in cross-examination that the approvals were required and it was for

the Appellant to establish that all necessary approvals were in place allowing him to lawfully conduct the online trading in stock. I cannot find fault in the Judge's analysis of the evidence before him and hold that he was correct in reaching his conclusions based on that evidence in paragraph 20 of his Judgement that "... the governing legislation referred to by the Defendant bank (particularly Exchange Control Act of 1950, Reserve Bank of Fiji Act 1983 and Tax Act of 2015) which governed the Plaintiff's activities was not complied with by the Plaintiff" and in paragraph 22 that:-

"22. The Plaintiff used the Defendant bank Mastercard to perform online business transactions, including purchasing and selling stocks for profit without prior clearance from the bank or applicable authorities. All of the transactions that occurred prior to and on the 27th and 28th June, 2019 were prohibited and illegal."

[36] In any event the Judge's principal finding was that based on the terms and conditions in the Mastercard Booklet and the evidence in its totality the Appellant's use of the card to buy and sell stock online was a business transaction or overseas remittance which was prohibited under the Mastercard terms and conditions of use. I hold that the Judge was correct in reaching this conclusion on the evidence before him. In particular the Judge was correct in finding that the Appellant's contention that his use of the Mastercard to purchase stock online was not a business transaction but was only to fund his account and maintain his profit margin was unfounded and misguided. Indeed I find this contention fanciful to say the least.

[37] For the above reasons I consider that this ground of appeal has no merit and should be dismissed.

Ground 4 – Systems error – "technical glitch"

[38] The Appellant claims in this ground that the Judge erred in law and in fact in failing to find that the Respondent could not complete the transaction due to a system error on its part. The Appellant relies in support of this ground on an email from an employee of the Respondent, to the Appellant, which stated that the decline of his card had been escalated to the Respondents IT team to investigate further. This the Appellant took to mean that the decline of his card was due to a technical glitch. The Respondent on the other hand submitted that no evidence was put forward by the Appellant on the alleged "technical glitch" or that the Respondent's system had

malfunctioned on the relevant dates. The Respondent further submits that in cross-examination the Appellant confirmed that he had no evidence of any technical glitch of the Appellant's online banking system.

Discussion

[39] This ground is entirely unfounded. As the Respondent has pointed out, there was no evidence of a technical glitch. The email on which the Appellant relies does not confirm this contention. It merely states that the matter was escalated to the Appellant's IT team. At the hearing of this appeal, Counsel for the Appellant was not able when asked to point to any evidence on the record where the Respondent acknowledged that the declining of the card was due to a technical glitch or system malfunction. The Respondent's evidence was that the transactions in issue were declined because the transactions exceeded the specified daily limit. The limit was increased at 7:50 pm on the 27th June 2019 to accommodate the Appellant but that he did not make any further attempts after that time to complete the transaction. In an email from the Appellant to the Respondent dated 3rd July 2019 the Appellant stated:-

"I confirmed to you I tried approximately 25 - 30 times and I was let down. I have all the receipts and all the failed attempt issues. There was an issue within your IT and technical issues with BSP, no issues with the merchant which I have also confirmed with the merchant."

The Appellant did not tender any of the alleged "receipts" at the hearing. The so-called confirmation with the merchant was an email from Fortrade which merely stated that he had attempted to make a deposit and that it didn't go through. It did not state why the deposit did not go through or more importantly that the deposit was unsuccessful due to a technical glitch or systems malfunction on the part of the Respondent. Indeed the email did not even refer to the Mastercard.

[40] I find that the Judge did not err in law or in fact in failing to find that the Respondent could not complete the transactions due to a system error on its part.

[41] This ground has no merit and should be dismissed.

Conclusion

[42] For the reasons stated above all the grounds of appeal are without merit and are dismissed. The parties agreed that the Judge should deliver Judgment based on the transcript of the hearing and the written submissions filed by the parties. I find that on the basis of the transcript and the written submissions the Judge did not err either in law or in fact in reaching the conclusions in the judgment or in the orders made.

[43] The Orders of the High Court dated 11th March 2024, including the order for costs which I find reasonable are affirmed.

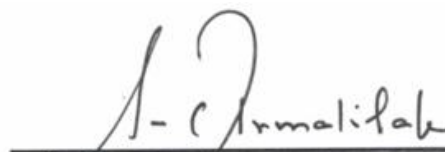
Andrée Wiltens, JA

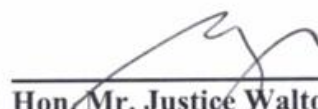
[44] I concur with the decision and reasons of Morgan, JA.

Orders of the Court

1. *Appeal dismissed.*
2. *The Appellant is to pay the Respondent's costs of this appeal in the sum of \$5,000 within 28 days of the date of this judgement.*




Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL


Hon. Mr. Justice Walton Morgan
JUSTICE OF APPEAL


Hon. Mr. Justice Andrée Wiltens
JUSTICE OF APPEAL

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