[2020] JMCA Civ 40

JAMAICA

IN THE COURT OF APPEAL

SITTING IN LUCEA, HANOVER

PARISH COURT CIVIL APPEAL NO COA2019PCCV00012

BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA

BETWEEN	**VERNAL BEDWARD**	**APPELLANT**
AND	**JAMAICA UNION OF TRAVELLERS ASSOCIATION LIMITED (MONTEGO BAY CHAPTER)**	**RESPONDENT**

Mrs Melissa Cunningham Cuff for the appellant

Nathan Robb and Mrs Nateline Robb-Cato instructed by Clark, Robb & Company for the respondent

19 November 2019 and 25 September 2020

PHILLIPS JA

[1] I have read in draft the judgment of my sister Foster-Pusey JA and I agree with her reasoning and conclusion.

F WILLIAMS JA

[2] I too have read the draft judgment of my sister Foster-Pusey JA and agree with her reasoning and conclusion.

FOSTER-PUSEY JA

Background

[3] On 18 December 2017 the appellant, Mr Vernal Bedward, filed a plaint in the Parish Court for the parish of Saint James claiming an injunction and damages for breach of contract. In his particulars of claim, the appellant stated that as a member of the Jamaica Union of Travellers Association Limited (Montego Bay Chapter), ('the respondent'), both parties entered into a contract by which they agreed to be bound by the rules of the respondent. He also pleaded as follows:

> "5. The by-law made by the Board of Directors of [the respondent] …provides at clause 7 that;
>
> > '*The Chapter shall be run by an Executive Committee made up of the officers and two other members. The Executive Committee of the Chapter shall be responsible for the general administration and management of the affairs of the Chapter and in particular shall give directions to its members as to the running of motor vehicles, the designation of stations at Hotels, Airports, Piers, and other specific locations.*'
>
> 6. That it was an implied rule of [the respondent] that this would be done fairly and would not be done in a way that would offend against the rules of natural justice.
>
> 7. [The respondent] entered into a contract with MBJ Airports Limited whereby it was issued a license for Ground Transportation Arrivals at Sangster's International Airport. Under this license [the respondent] is able to operate a designated customer service desk at the Airport as well as operate designated commercial vehicles at pick up areas designated by MBJ Airports Limited for picking up and dropping off passengers and baggage.

8. Based on this contract with MBJ Airports Limited [the respondent] commenced a practice whereby members are assigned parking space at the Airport by [the respondent] and issued with a pass that allows access to the Airport and the designated parking space. A representative of [the respondent] who operates the designated customer service desk would then call the names of members assigned parking space[sic] and issue to them a second pass that allows access to the lobby where members can then get passengers. On occasion the representative may take passengers to members as well. All members to whom parking space is assigned pays [sic] parking fee to [the respondent]. [The respondent] then makes payment to MBJ Airports in compliance with the license agreement.

9. By letter dated November 12, 2012 [the respondent] assigned [the appellant] decal #041 at the Airport. [The appellant] duly took up use of the space and paid the relevant parking fees.

10. That on or around November 27, 2017, Joslyn Vassell, [the respondent's] representative at the Airport informed [the appellant] that he was advised by Garfield Williamson not to collect any parking fees from [the appellant]. That when [the appellant] asked why Mr. Vassell stated that he did not know.

11. That [the appellant] by letter dated November 28, 2017 through his Attorney enquired as to the reason for this however he was not afforded a response.

12. That on the 1st day of December 2017 [the appellant] was restricted by [the respondent] from accessing the lobby at the Airport to secure passengers. [The appellant] has not been able to make any income from the Airport since.

13. That [the respondent] also has a contract with Island Routes from which [the appellant] usually gain [sic] work. That [the appellant] has not received any work from this venture since 2016 despite repeated queries as to why he is no longer assigned any work from that venture.

14. That [the appellant's] airport pass, which allows him access to the designated parking space, will expire

on December 31, 2017. [The appellant] will require a letter from [the respondent] to renew his pass. If [the respondent] refuses, fails and/or neglects to provide this letter it would effectively block [the appellant] from using the parking space at the Airport.

15. That [the respondent's] action in restricting [the appellant's] access to the Airport lobby is interfering with [the appellant's] right to work.

16. That [the respondent's] actions amount to a breach of contract.

17. That the action of [the respondent] is actuated by malice and is an attempt to expel [the appellant] from the organization without any cause or due process in breach of the laws of the organization.

WHEREFORE [THE APPELLANT] CLAIMS

1. A permanent injunction restraining [the respondent], either by itself or through its servants, agents or employees from taking any steps to restrict [the appellant's] use of decal #041 currently assigned to [the appellant] at the Sangster's International Airport except in accordance with the by-laws of the association.

2. A permanent injunction mandating [the respondent] to continue to take all necessary steps to grant [the appellant] access to the lobby of the Sangster's International Airport save and except in accordance with the by-laws of the Association.

3. Damages for breach of contract…" (Italics as in original)

[4] On 10 April 2018 Her Honour Miss Annette Austin, Parish Court Judge for the parish of Saint James, ('the Parish Court Judge'), who tried the matter, on an application made by Peaches Service Noble, ('Mrs Service Noble'), added her as a defendant to the claim.

[5] The respondent, in its defence articulated orally before the Parish Court Judge, stated that the appellant's enjoyment of the parking space, also referred to as a "park" by members of the respondent, was as a result of an agreement which the appellant had signed with Mrs Service Noble. It denied that the assignment of a decal to the appellant represented any personal right to a parking space at the airport. It also denied any particular contract between itself and the appellant arising from his membership of the association. The respondent stated that the appellant was entitled to neither the injunctions claimed nor damages for breach of contract, and asserted that the appellant should honour the rules of the association and give up the parking space assigned to him in keeping with the agreement he had with Mrs Service Noble.

[6] Mrs Service Noble's defence was that the appellant was only permitted to use the parking space as a result of the agreement which they had signed, and which was witnessed by a Justice of the Peace ("JP"). In September 2012 she had authorized the respondent to allow the appellant to utilize her parking space. The agreement having been brought to an end, terminated any rights and obligations which the appellant had. As a result, the appellant was not entitled to damages or the injunctions sought.

[7] The Parish Court Judge granted interim injunctive relief so as to ensure that the appellant had access to the parking space in question, pending the determination of the claim.

The decision of the Parish Court Judge

[8] On 28 June 2019, the Parish Court Judge non-suited the appellant on his claim against the respondent and ordered that he pay costs to the respondent.

[9] The Parish Court Judge also ruled that the agreement which the appellant had entered with Mrs Service Noble, was void. This decision has not been challenged. However, as will be seen below, the evidence led in respect of the agreement, and the interaction between the appellant and Mrs Service Noble are relevant to a determination of this appeal.

The grounds of appeal

[10] The appellant appeals the decision of the Parish Court Judge to non-suit him, and asks this court to grant him injunctive relief and damages for breach of contract against the respondent.

[11] By notice of appeal filed on 9 July 2019 he relies on the following grounds:

> "a. That the learned judge erred when she ruled that the Appellant is non-suited as against the Respondent because of his failure to plead and prove damages in circumstances where the Appellant had a cause of action for breach of contract which had been made out on the evidence and which the court was competent to hear and determine. As a remedy for the said breach of contract the Appellant also sought injunctive relief which is a remedy within the jurisdiction of the court to grant. The learned judge clearly fell into error when she concluded that because the Appellant did not plead and prove damages, she could not determine any other aspect of the claim or provide any other remedy prayed for on the Particulars of Claim.
>
> b. The learned judge erred when she failed to make a ruling on whether there was a contract between the Appellant and the Respondent and whether the Respondent was in breach of the said contract.
>
> c. The learned judge erred when she failed to make a ruling as to whether the Appellant was entitled to the injunctive relief sought on the Particulars of

Claim as against the Respondent to prevent any further breach of contract.

d. The learned judge erred when she failed to rule on whether the Appellant was entitled to an injunction against the Respondent, the Respondent being an association which controls the Appellant's right to work, to restrain the Respondent from interfering with that right arbitrarily or capriciously.

e. The learned judge erred when she failed to give a judgment on the claim by the Appellant against the Respondent where there was sufficient evidence before the learned judge on which she could have given judgment.

f. That the learned judge erred when she found that the Appellant had not proved damages as against the Respondent in circumstances where the Appellant's evidence of damages suffered was not disputed or challenged by the Respondent and there was sufficient [sic] before her on which she could assess damages.

g. That the learned judge erred when having refused the Respondent's application to non-suit the Appellant at the end of the Appellant's claim on the basis that there was sufficient [sic] before her to assess damages she then at the conclusion of the trial overruled her earlier decision and made an order non-suiting the Appellant on the same basis."

In light of the nature of the issues to be considered it has proved necessary to outline in detail the evidence which was led at the trial.

The appellant's case below

[12] The appellant deposed that he became a tour operator with the respondent sometime in 2006. The respondent's core business is tours and taxi services. Before becoming a member of the respondent an individual must own a motor vehicle, must be team-Jamaica certified and must have a clean police record. The respondent organization is led by its president, secretary and treasurer along with two directors.

[13] The organization is governed by bye-laws with which the appellant was familiar. He served as secretary to the respondent over the period July 2015 to September 2016. On becoming a member, an individual must pay the annual dues and comply with the bye-laws. The appellant testified that he was compliant with the bye-laws and all other requirements of membership.

[14] According to the appellant, some of the benefits derived from being a member of the respondent include: being allowed parking spaces at hotels and the airport, benefiting from the passengers who disembark from cruise ships and benefiting from any contract that the respondent may have. The appellant stated that he had a parking space at the airport, "by being a member of [the respondent]". He testified that, while in the position of secretary to the respondent, he had read a contract between the respondent and the airport, which was renewable annually, for 66 taxi parking spaces at the airport. He also assisted in distributing the work which came into the respondent. At times, this work came by way of contracts from other tour companies and work from cruise ships. He stated that at one time, the respondent had a contract with Mystic Mountain to take guests to its location.

[15] Apart from the parking space at the airport, the appellant indicated that, on the basis of his membership of the respondent, he had done other work, as the respondent had a contract with a tour company named Island Routes.

[16] The appellant testified that he was very familiar with the bye-laws of the respondent and he did not know of the respondent ever taking away a parking space that was assigned to a member.

[17] Although the appellant was a member of the respondent from some time in 2006, it was on 12 November 2012 that he acquired the parking space in question at the airport. He explained how he came to acquire the space. The respondent manages the airport taxi stand. The appellant stated, at page 14 of the record:

> "I got a letter from [the respondent] addressed to MBJ's Airports Ltd. … The letter was dated 12th November 2012. The letter was addressed to Mr. Peter Hall, Ground Transportation Manager. It was signed by Mr. Basil Thorpe (then Treasurer of [the respondent] and Mr. Peter Hall from MBJ and Ms. Francine Salmon of MBJ."

[18] The letter, which was written on the letterhead of the respondent, was entered into evidence and reads:

> "I am hereby requesting that decal #041 that was assigned to Mr. Cornaldie McGhie's 1992 Chevy Caprice registered PP 847D be re-assigned to Mr. Vernal Bedward.
>
> Mr. Bedward operates a 2006 Toyota Hiace registered PC 7615.
>
> Kindly update your file with this information."

[19] It is significant to bear in mind the appellant's evidence in respect of the importance of his having been assigned a decal number, as he relied on the decal number and reference to Mr McGhie in his arguments concerning his entitlement to a parking space at the airport.

[20] In light of the letter dated 12 November 2012, decal #041 was reassigned to the appellant's vehicle, which he owned and operated. Although the letter referred to a decal which was previously assigned to a Mr McGhie, whom the appellant knew, and who was a member of the respondent in November 2012, the appellant stated that

he did not have any discussions with Mr McGhie before 12 November 2012 or at all in relation to decal #041.

[21] He explained the process which usually follows on the assignment of a decal number. The vehicle owner's name is registered and the owner is called on a daily basis on a list that is rotated. The owner needs to get an extra pass to enter the airport's lobby. He stated further:

> "If your name is not called on the books as long as you have that pass you can access work outside of the lobby. That's at the general Arrivals area. That is basically the process.
>
> Once you're assigned a decal your name is registered in a book and on a daily sheet. [The respondent] have [sic] supervisors at the Airport about seven of them and a Chairman and Vice-Chairman of the Airport taxi stand who record in the book and in the work sheet."

[22] At page 24 of the record, the appellant explained what happens to parking spaces previously used by a person who had died. He stated that, to his knowledge, the bye-laws provide that when a member of the respondent dies his estate may operate the vehicle which he left, if the estate is in a position to comply with the rules and regulations of the association. The executive of the respondent could also reassign the parking space to another member.

[23] The appellant stated that, as a member with a space at the airport, he was required to pay a monthly parking fee to the respondent, and this fee is turned over to MBJ. When he paid this fee he received a receipt addressed to "A. Service". He did not know this individual although he had heard of him and knew that he had died five years before. On the first occasion when he collected a receipt in 2012, he queried the basis on which he was being provided with it in the name "A. Service", however,

the president of the respondent, Mr Garfield Williamson, told him that "I should not worry myself because no one was bothering me on the park".

[24] The appellant stated that he came to know Mrs Service Noble in September 2012 when they had discussions relative to a parking space at the airport. After they had come to a verbal agreement, he suggested that they put the agreement in writing. They signed the agreement and thereafter it was witnessed by a JP. The agreement was then taken to the respondent's office at Claude Clarke Avenue, Montego Bay. When asked to explain the nature of the agreement that he had with Mrs Service Noble, the appellant explained that:

> "She said she had a parking space at the Airport which her dead father had left and she agreed to let me use the parking space at a cost per month."

[25] He stated that he did not, however, take up the use of the parking space as he had a parking space reassigned to him about two months later. The appellant stated that the parking space which was reassigned to him related to Mr McGhie's 1992 Chevy Caprice, which was no longer functioning. He explained that Mr McGhie had two spaces but in November 2012 he was only using one of the spaces.

[26] When the appellant was asked whether he recalled the cost that he paid to use the space of Mrs Service Noble's "dead father", he indicated that it was US$100.00 per month. He stated that he paid Mrs Service Noble because after he spoke with the president about the "noticeable irregularity" of the parking fee receipt being issued in the name "A. Service", the president assured him that he should continue the arrangement if he intended to remain at the airport. The appellant said he had questioned the fact that he was not using the parking space for Mrs Service Noble,

yet he was required to pay, and was told that he needed to continue paying if he intended to stay there. He stated that he had heard that A Service was a member of the respondent, but did not know this for sure, and Mrs Service Noble was not a member either in 2012 or 2015.

[27] The appellant then testified to having a strained relationship with the president of the respondent due to various issues. In 2017, he unsuccessfully contested elections for the position of secretary. He, thereafter, along with some other members, employed an attorney-at-law due to irregularities that he believed had transpired during the elections.

[28] On 1 December 2017 the appellant said that he went to the airport as was customary. However, he did not hear the name to which he usually answered, called, and, as a result he was not able to work that day. When he called the president and told him of the experience, the president told him that he had no time to discuss the matter as he was busy. Thereafter he was unable to work between 1 December 2017 and 16 February 2018. He explained that he was unable to work, as his name was not called on the books at the airport, and the name A Service was changed to P Service as of 1 December 2017. It was as a result of a court order that he was able to work as of 17 February 2018.

[29] This was not, however, on a consistent basis. Between 10 April 2018 and 3 May 2018 and 23 July 2018 and 20 September 2018 he was not able to work because the pass was not issued for him to work. A pass is issued when the respondent requests one from the airport, who would then issue the pass to the member on whose behalf the application was made. The respondent had not made a request for the relevant

pass to be issued to him. The appellant explained that a pass would usually be issued for one year. He had one in 2017 and it expired on 31 December 2017. This meant that on 1 December 2017 he had a valid pass.

[30] The appellant stated that since 1 December 2017 he had not paid any parking fees at the airport. This was because when he made efforts to pay he was told that instructions had been given by the executive that no payment would be accepted from him.

[31] The appellant gave evidence in respect of his earnings. He stated that, based on his membership of the respondent, he had worked at the airport for five years, six days per week. On average he earned US$100.00 per day in the high season and US$50.00 or $60.00 per day in the slow period. The high season takes place in the Christmas period between 1 December and 31 January and in the independence season for the entire month of August.

[32] The appellant was then cross-examined by the attorney-at-law for the respondent.

[33] He agreed that he became a member of the respondent in 2006 and, before that, he had joined Maxi Tours which he had left some months later. He did not know of Maxi Tours having any park at the airport. The appellant acknowledged that there was another company, JACAL, at the taxi stand at the airport. When asked whether he joined the respondent in order to get 'a park' at the airport, he denied this and said instead that he joined it because the respondent looked "like it was going someplace"- meaning it appeared to be successful. Although the respondent was making some

progress, in his view, it was becoming unsuccessful, and he did not continue as secretary as he had not succeeded in the last elections in which he had participated.

[34] The appellant testified that prior to 2015 he was at the airport in his JUTA capacity.

[35] The appellant's relationship with the president was explored in the course of his cross-examination by the respondent. It emerged that when the appellant wished to join the respondent, he spoke with Mr Drummond (who the appellant described as one of the president's 'very influential right hand men'), and then with the president himself. At the time that he spoke with the president he did not have 'a park' at the airport. He was "going between the ship and doing contract work" that the respondent had. While the ship came regularly, it did not do so daily.

[36] He was shown a document dated 10 September 2012, which he had signed and which was witnessed by a JP. He agreed that the letter reflected the agreement which he had entered with Mrs Service Noble in order to use her parking space at the airport, and that, consequent on the agreement, he made payments to her. He, however, denied that he was operating at the airport as a result of the agreement with Mrs Service Noble and said instead, that he was operating there by virtue of the authorization letter given to him by the respondent, which was "under the name Cornaldi Meghie".

[37] When asked whether, at that time, he had terminated the agreement with Mrs Service Noble, he said "[t]he letter I got from [the respondent] terminated that agreement". This was so although the letter did not say anything about termination.

[38] He acknowledged that, although he joined the respondent in 2006, he first parked at the airport in 2012. He had signed an agreement with Mrs Service Noble in September 2012, two months before he received the letter which the respondent addressed to the airport. The appellant stated that he had signed the agreement with her, and paid her money, as, at the time, he honestly believed that she had a space at the airport that he could have accessed. He presented the agreement which they had signed to the respondent, as he expected that the respondent would have followed through if there was 'a park' for Service Noble at the airport. In addition, the name A Service was the name in which each park fee receipt was written and when he questioned the president he was told not to worry. He stated that since 2012 he had never received a receipt for the parking fee in his name, the respondent continued to write receipts in the name "'A Service' … A dead man".

[39] As secretary of the respondent, the appellant stated that he was aware of the rule whereby the family of deceased members inherited their "park". He stated that he was told that Mrs Service Noble was the daughter of the dead man, Arnold Service. While he submitted the agreement he had signed with her to the respondent, and had expected the respondent to "follow through on the directives in the letter if there was a space owned by Service Noble or inherited by Service Noble", he "did not get that space".

[40] The respondent's attorney-at-law cross-examined the appellant on the question of the impact of having a decal and a pass, as well as whether Mr McGhie had had anything to do with the parking space which the appellant alleged had been assigned to him.

[41] The appellant testified that the letter which he received from the respondent in 2012 and took to the airport, was processed and the chairman of the stand at the airport issued a decal to him as was the norm. He explained that the decal is issued in his name, that is, Vernal Bedward who operates a vehicle. If the vehicle changes, then the particulars of the vehicle are changed and there is no need to get a new decal.

[42] The appellant denied that decal #041 simply allowed him to go into the airport and pass the security personnel. He testified that the respondent's parking spaces were not numbered, there was no #041 decal space, however, the decal authorized a person to occupy a space at the airport. He acknowledged that there was no specific parking space for Mr McGhie. At first he stated that during the time that he had been working at the airport he did not recall having any decal issued to him apart from #041. Later in cross-examination, however, the appellant stated that, since 2012, he had received other decals apart from #041. He recalled that the chairman issued the last decal to him for the period 2017-2018.

[43] The appellant acknowledged that the November 2012 letter said that the decal was assigned to Mr McGhie's Chevy and not to Mr McGhie. He recalled that the decal issued to him was replaced on one occasion because it was damaged. He got it through the stand chairman. The appellant stated that without a pass to work at the airport, a person cannot go into the airport hall, or solicit inside or out, as that would be illegal and you would become a "hustler".

[44] When asked whether the pass of which he spoke was needed to come into the airport he responded in a somewhat ambiguous manner:

"To come in and work. No you don't."

[45] He stated that during the time that he had been unable to work he had a decal on his vehicle. In February 2018 when he was again able to work he also had a decal on his vehicle. However, in April 2018 when he was unable to work at the airport he had that same decal which allows a person into the airport taxi area. The appellant stated that the decal not only allowed a person to be in the arrival/departure area as well as in the designated areas as an authorized taxi driver, but "anywhere". He stated that the decal indicated to the airport authority that you are authorized to be there and you have 'a park' there. He stated that he was not stopped from being in the airport during "February 17-September".

[46] The appellant stated that, apart from a decal number that allows you to go into the airport and park in an available place, "[a] place has to be available for you to park". He again agreed with the suggestion made to him that there was no space with #041 as the physical space is not numbered. When asked whether the decal he had for 2019 was #167, he stated that that was a "possibility" and again said that he did not know of any space numbered 167. The appellant agreed that on the last occasion when he was before the court he had to get a letter from the respondent to get a restricted area pass ('RAP') in order to access the airport lobby. Despite having a decal, he was not able to go into the airport lobby without a RAP as they had to go together.

[47] Insofar as Mr McGhie was concerned, the appellant stated that he did not get a letter from Mr McGhie giving him permission to use his space, as it was not Mr McGhie's place to give him that letter under the circumstances, only the respondent could do that. He reiterated that the respondent reassigned 'a park' to him that was

previously occupied by Mr McGhie but was no longer occupied by him, as Mr McGhie had had two "parks". He stated that he did not pay any fees in the name of Mr McGhie, as the respondent had not arranged things that way. The appellant denied that he was being untruthful. He denied that the president had told him that no park fee would be collected from him because Mrs Service Noble had instructed that she was going to use her space and the agreement with him had been terminated.

[48] The appellant was then cross-examined by the attorney-at-law for Mrs Service Noble.

[49] He acknowledged that since joining the respondent in 2006, he had JUTA membership number #765. He agreed that in 2012 he received a decal to access the airport and agreed that it was a possibility that the decal number could change from year to year. He indicated that when a person parks at the airport they sign after they have completed the job given. When signing at the airport, he was currently signing under the name P Service. That was also the name to which he responded at the airport whenever he went to the desk for a job. He acknowledged that he did not answer to Cornaldi McGhie at the JUTA desk, and that prior to 2018, he answered to "A. Service". He agreed that there were 66 parking spots at the airport.

[50] In or around June 2012 the appellant went to speak with Mrs Service Noble at her home in Adelphi. He said that he did not recall whether he first spoke to her mother and he did not recall having information about the death of her father. He acknowledged that he had seen Mrs Service Noble before 2012, but said that he did not know her to talk to. He did not agree that he had discussed with her that her

father had passed away, and whether she would allow him to park at the airport in her father's parking space. He insisted:

> "I went, we talked, we had an agreement. I don't recall having any information about her father's death."

[51] Although the appellant knew that a member's space could be inherited, he denied that he went to Mrs Service Noble because he knew her father was dead. He said he did not have that information at the time. Instead, he had received information that she had a spot at the airport and so he went to her. He said that he could not recall Mrs Service Noble telling him that Everald Samuels was using the spot at the time and said he did not know about Everald Samuels. He denied that he kept going back to Mrs Service Noble begging her, because he needed to have 'a park' at the airport. At the suggestion that on one of the occasions he told Mrs Service Noble that he was in need of 'the park' because he had to be "hitching around the airport and hiding from the police", he responded "[t]hat is total non-sense". He denied that he asked Mrs Service Noble to call Mr Basil Thorpe the treasurer, who was his church brother, to vouch for his character.

[52] He agreed that Mrs Service Noble told him that she used the money she collected from him for "the park" to pay her mother's bills and expenses, but said that this had occurred when he was at the airport paying her. He denied calling Mrs Service Noble on numerous occasions about renting the spot, and said instead that he only called her twice and then they came to an agreement. He insisted that the verbal agreement be put in writing and their signatures witnessed by a JP. He denied calling Mrs Service Noble numerous times in July, August and September of 2012 about the drafting of the agreement. He agreed that sometime in early September 2012 he went

ahead and prepared the agreement himself, he showed it to her, she agreed to it, accompanied him to the JP and signed it.

[53] The appellant inserted the amount of US$100.00 in the agreement as this is what Mrs Service Noble said that she wanted. He agreed that he took two documents to the respondent, one was the agreement and the other was a letter to the respondent from Mrs Service Noble authorizing him to park in the airport spot. He agreed that apart from the US$100.00 that he was to pay her, it was also agreed that he would pay the parking fee on a monthly basis after which he would get a receipt for the park fee in the name "A. Service". He started paying the US$100.00 on 28 October 2012 and did so monthly. He agreed that at a time he could not recall he asked for the amount to be reduced to US$70.00 but Mrs Service Noble countered with US$80.00. When asked whether he started paying US$80.00 from February 2013 until September 2016, he said that he could not remember the date when it was reduced, however, he was paying US$80.00 for a time. He agreed that in September 2016 Mrs Service Noble told him that he would have to start paying US$100.00 again and he resumed paying that amount. It was suggested to the appellant that he paid the amount until November 2017 when he received notice from Mrs Service Noble that she would be utilizing her JUTA spot that he was occupying. He stated in response:

> "I paid until November when I was told by the persons at the airport that Garfield Williamson had called them to a meeting and told them to change the name from 'A Service' to 'P. Service' and that they should not dispatch any work to me."

[54] Since he was told that no parking fees would be collected from him, and no work would be distributed to him, he ceased paying the US$100.00 to Mrs Service Noble.

[55] The appellant was asked whether he had received from Mrs Service Noble, a letter dated 1 November 2017, copied to the respondent, indicating that she would be utilizing her parking spot. He reiterated that Mrs Service Noble did not give him anything, he was not using 'a park space' for her, he was using McGhie's spot. He denied being hesitant about, but eventually taking the letter from Mrs Service Noble in which she asked him to vacate 'the park' by 1 December 2017. He denied calling Mrs Service Noble a week later asking her to reconsider and allow him to use the spot for two more months. He denied that Mrs Service Noble told him "no" while indicating that she now owned a bus and required the spot for her own use. He agreed that since becoming a JUTA member in 2006, and until late September 2012, he had not had a parking spot at the airport.

[56] The appellant called Mr Daniel Hutchinson, a fellow member of the Montego Bay chapter of the respondent, in support of his case. Mr Hutchinson testified that he provided transportation services from Montego Bay, however, as it was a contract carriage arrangement, he could get work from anywhere. He was based at the cruise ship pier. He gave evidence about consulting an attorney-at-law before the 2017 elections was held in the organization. He stated that he used to regularly get work when ships called in Montego Bay, however, since the elections in 2017 for positions in the respondent association, the times when he would receive work were drastically reduced. He attributed this reduction to action by the president of the respondent.

[57] In cross-examination Mr Hutchinson stated that, to his knowledge, a person must have a valid road licence, a motor vehicle and 'a park', meaning a base where you should stay, in order to become a member of JUTA.

[58] He testified that he knew the appellant as a worker, having met him at the ship. He explained that even if a person does not have 'a park' at the ship, they can receive work at the ship because "people have customers that meet them at the ship". Mr Hutchinson had never worked at the Sangster airport.

[59] That was the case for the appellant.

No case submission made

[60] Counsel for the respondent then made a no case submission. He referred to the fact that the appellant was pursuing a claim for breach of contract, however, the plaintiff having closed his case without any claim for any particular sum, should have been non-suited for failing to invoke the jurisdiction of the court.

[61] Counsel for Mrs Service Noble also submitted that the appellant ought to have been non-suited in regards to damages. She argued that there was no evidence which could be utilized to establish damages for breach of contract.

[62] Counsel for the appellant submitted that evidence had been led as regards the period when the appellant had been unable to work, as well as the likely sums he would have earned for the high season and the low season. In addition, the appellant was not only seeking damages, but also an injunction.

[63] The Parish Court Judge ruled that there was a case to answer as:

> "the amount was quantifiable to satisfy the Monetary Jurisdiction based on the two (2) rates given in [the appellant's] submission."

[64] The respondent exercised the option to stand on its no case submission and not call any evidence. However, Mrs Service Noble gave evidence.

The evidence of Mrs Service Noble

[65] Mrs Service Noble testified that she had been a member of the respondent since January 2012. Her father, Arnold Service, had been a founding member of the respondent in 1976. He remained a member until his death on 8 January 2012.

[66] She became a member by virtue of paragraph 2.05 of the bye-laws of the respondent, which speaks to the death of a member of the respondent. Her father had 'a park' at the Sangster International Airport.

[67] Sometime near the end of June 2012, Mrs Service Noble came to know the appellant who visited her home. Apparently, when he first visited she was not there, and so her mother gave the appellant her number and told her certain things. The appellant eventually called her. He expressed condolences on the death of her father, told her that he had heard that her father had a park at the airport and asked whether she would allow him to use 'the park'.

[68] Mrs Service Noble said she told him that Mr Samuels was using 'the park' at the time. Whenever her father went abroad he used to allow Mr Samuels to use 'the park'. Since her father took ill, and after his death, as she was pursuing funeral arrangements, Mr Samuels had continued to use 'the park'. Whenever he did so he paid her and paid 'the park' fee. Mrs Service Noble told the appellant that she would have to think about his request as well as speak to Mr Samuels. Although she was

reluctant to speak with Mr Samuels, the appellant called her repeatedly until she did so.

[69] Having spoken to Mr Samuels, Mrs Service Noble told the appellant that she would prepare an agreement for them to sign. She did not prepare the agreement. It was the appellant, who, in September 2012, called her and told her that he had prepared the agreement. She said to him, at page 80 of the record:

> "Mr. Bedward, I am the one who is supposed to do the agreement, you are not the one to do the agreement."

[70] Thereafter, at the appellant's request, Mrs Service Noble met with him in Montego Bay. He showed her the agreement which he had prepared, she queried why he had not inserted in it the agreed figure of US$100.00. The amount was later written in. It was not only the agreement which the appellant had prepared. He had also prepared a letter to be sent to the respondent. Mrs Service Noble explained, at page 80 of the record:

> "If you [sic] allowing someone to use your park you have to send a letter to JUTA office saying that you are allowing them to use your park. And he did one of those letters also…"

[71] Mrs Service Noble signed the letter. It was also signed by a JP. The appellant took Mrs Service Noble to a JP whom he had known before. The JP witnessed the agreement which the appellant signed as well as the letter to the respondent. The agreement, which was dated 10 September 2012 read as follows:

> "I, [the appellant] of … agree to pay the sum of US$100 per month to Peaches Service-Noble for the use of JUTA park and also to pay the park fee to M.B.J Airports Ltd.
>
> Sign: V. Bedward

Witness:……(Sign)……… Hazel Dalley,

Justice of the Peace for
the parish of St. James."

[72] In or around the day following the signing of the agreement, Mrs Service Noble took the letter to the respondent's office.

[73] It had been agreed that the appellant would pay her US$100.00 on the 28th of each month so that she could pay in time bills relating to her mother. He commenced payment on 28 October 2012 and continued doing so until sometime in January 2013. According to Mrs Service Noble, at that time, the appellant came to her and told her that things were "not so bright" at the airport and he was asking her to reduce the monthly payment to US$70.00. Mrs Service Noble countered that suggestion with US$80.00 as the least that she would accept. He paid US$80.00 until September 2016 when she told him that she could no longer accept that amount, as the bills for her mother exceeded that amount. The appellant again began to pay US$100.00 per month. This continued until October 2017.

[74] On 1 November 2017 Mrs Service Noble gave the appellant one month's written notice, to expire on 1 December 2017, that she was ready to use 'the park'. Mrs Service Noble testified that when she gave the appellant the notice, they had the following exchange of conversation, at page 82 of the record:

> "'Is the President tell you to give me Notice?' I said to him 'Mr. Bedward I am disappointed in you because when we were doing the agreement the President did not know anything about it, until I bring the letter to the office'. He said he knows what to do so he was still using the park but I started paying my park fee."

[75] The appellant continued to use 'the park' although he stopped paying 'the park' fee as of December 2017. Mrs Service Noble paid 'the park' fee, which had varied from US$40.00 to US$62.00 per month, but was unable to use 'the park'.

[76] In addition, the appellant, for the period November 2017 to April 2019, did not pay Mrs Service Noble for 'the park', although he continued to occupy it. Mrs Service Noble explained that it was because of this state of affairs, caused by an injunction which had been granted to the appellant, that she applied to be added to the claim which the appellant had brought against the respondent.

[77] In cross-examination by counsel for the appellant, Mrs Service Noble again acknowledged that Mr Samuels used her father's park when he travelled and after he died. Although Mr Samuels had 'a park' for himself at the airport, he was also using her father's 'park' for his bus. She agreed that Mr Samuels would have needed to have a decal in order to operate the bus from the airport. While her father was operating a bus at the airport before his death, and died leaving it, after his death, that vehicle was not being operated at the airport.

[78] Mrs Service Noble agreed with the following suggestion:

> "Do you agree that a JUTA members' estate can only benefit from the members' space at the Airport if the member dies leaving a motor vehicle i.e. in order to use your father's space after he died, you had to have had a motor vehicle?"

[79] She testified that she became a member of the respondent in 2012 and was issued with a membership card. She commenced paying dues that year and received a receipt for same in her name. When she became a member she already had her father's parking space. Although she owned a personal vehicle, she was not operating

it at the airport at the time, as she was dealing with her father's death. Immediately after her father's death Mr Samuels was using 'the park'.

[80] Mrs Service Noble denied that it was the appellant who suggested that they put in writing the agreement for him to use 'the park'. She insisted that he in fact told her, when she gave him notice, that it was the president of the respondent who had made her give him notice. Counsel for the appellant also posed the following question, to which Mrs Service Noble responded, at page 89 of the record:

> "Q. You said you took a letter to [the respondent], do you know if [the respondent] gave [the appellant] your father's park to use?
>
> A. Yes, it's the park he is using. I gave [the respondent] permission to allow him to use the park."

[81] When shown the letter which she had addressed to the respondent in relation to 'the park', Mrs Service Noble acknowledged that it neither mentioned her father's name nor Mr Samuels' name.

[82] Mrs Service Noble was then cross-examined by counsel for the respondent. She indicated that her father had been the breadwinner of the family and left behind her mother, who was not working at the time of her father's death. She had to pay various bills and related this to the appellant, who agreed to pay her US$100.00 per month in advance. He had also promised to add some more to that amount in the peak season, but he never did so.

[83] Interestingly, counsel for the appellant, in her closing submissions before the Parish Court Judge, submitted, among other things, that the appellant had not been

given the space previously occupied by Mrs Service Noble's father, and there was no enforceable contract between Mrs Service Noble and the appellant.

The reasons and findings of the Parish Court Judge

[84] The Parish Court Judge determined that there were a number of matters which were not in issue. At pages 237-238 of the record she stated (numbering, though not in the reasons, has been inserted for ease of reference):

> "(i) It is not disputed that there was an agreement between [the appellant] and Peaches Service Noble dated September 10, 2012.
>
> (ii) That the agreement was for [the appellant] to pay US$100 per month for the use of JUTA park and also for him to pay park fee to MBJ Airports Ltd.
>
> (iii) That there was a letter from Peaches Service Noble to JUTA authorizing [the appellant] to utilize her parking spot.
>
> (iv) It is not disputed that a letter for [sic] Basil Thorpe (Treasurer) dated November 12, 2012 was sent to Peter Hall (Ground Transportation Manager MBJ Airports Ltd). That [the appellant] was issued receipts in the name 'A' [sic] Service and was given work and answered in the name 'A' Service. That 'A-Service' was changed to 'P-Service' on December 1, 2017.
>
> (v) It is not disputed that that letter requested that decal #041 that was assigned to Cornaldie McGhie's 1992 Chevy Caprice registered PP847D be re-assigned to [the appellant] who operated a 2006 Toyota [sic] Hiace registered PC7615.
>
> (vi) That [the appellant] was issued receipts in the name 'A. Service' and was given work and answered in the name 'A. Service'
>
> (vii) That 'A. Service' was changed to 'P. Service' on December 1, 2017.

(viii) It is not disputed that [the respondent] is governed by by-laws.

(ix) It is not disputed that [the appellant] did work between December 1, 2017 - December 31, 2017 and January 1, 2018 - February 16, 2018. (Other periods were given in evidence but as Counsel for [the appellant] submitted in her closing address that [sic] those other periods are not to be taken into consideration).

(x) It is not in dispute that a decal # is required to be [sic] access the parking spaces at the Airport and a 'Restricted Area Pass' is required to access the lobby.

(xi) It is not in dispute that parking fees are collected from [the respondent] members and paid to MBJ.

(xii) It is not in dispute that a decal # can be re-assigned to any [respondent] member.

(xiii) It is not in dispute that the **parking spaces are not numbered.**

(xiv) It is not in dispute a decal # is assigned to a vehicle and not to the owner of the vehicle per se.

(xv) It is not in dispute that a [respondent] member **may be assigned a different decal # from time to time.**

(xvi) It is not in dispute that there are **66 parking spaces** at the Sangster International Airport and those spaces belong to MBJ and that [respondent] members pay parking fees to [the respondent] who in turn pay [sic] MBJ for use of these parking spaces." (Emphasis as in original)

[85] The Parish Court Judge indicated, at page 239 of the record, that the issues which arose for determination included –

(i) whether there was an implied contract of employment between the respondent and the appellant;

(ii) was there a breach of the said contract;

(iii) was the appellant entitled to damages;

(iv) was the appellant entitled to a permanent injunction;

(v) was the agreement between the appellant and Mrs Service Noble valid; and

(vi) what was the effect of the letter from the respondent to the airport.

[86] The Parish Court Judge acknowledged that both the respondent and Mrs Service Noble had operated on the basis that a valid and enforceable agreement existed. However, the appellant had testified that he was honouring the agreement in practice only and was instead, relying on the letter which the respondent sent to the airport assigning decal #041 to him.

[87] She examined the requirements for membership of the respondent and considered the effect of rule 2.05 of the bye-laws. She concluded that the rule referred to a right to operate a vehicle to which a decal number would be attached and not to the person who owns the vehicle. In her view, contrary to the suggestions of counsel for the respondent and Mrs Service Noble, the rule did not relate to an inheritance. She opined, at page 240 of the record, that "[a]n inheritance is a gift of money or property from a deceased person after his/her death".

[88] The Parish Court Judge was not impressed with the appellant's reliability and credibility insofar as the agreement with Mrs Service Noble was concerned. At page 246 of the record she stated:

> "[The appellant] gave evidence that at the time when he made overtures to Peaches Service Noble about a parking space which subsequently morphed into **EXHIBIT 2** he ***does not recall having any information about the death of her father.*** This is highly incredulous. Why would he seek out and subsequently spearhead the signing of an agreement if he did not know that for a fact. Why her? And not somebody else? The court noted that [the appellant] was evasive during this line of cross-examination and was thereby unconvincing on this point." (Emphasis as in original)

[89] The Parish Court Judge found that the bye-laws did not have any specific provision allowing for rental of parking space and, as a result, the agreement between the appellant and Peaches Service Noble was in breach of the said bye-laws. The Parish Court Judge also stated that the respondent could not enforce an agreement which breaches its bye-laws. She found that the respondent was not honouring the agreement between the appellant and Mrs Service Noble when it wrote the letter requesting that decal #041 be assigned to the appellant.

[90] The Parish Court Judge noted that at the close of the trial, counsel for the appellant had submitted that the appellant's claim was for general damages, as the appellant did not have any receipts to prove income. At page 250 of the record the Parish Court Judge stated that:

> "… a more fundamental issue is whether [the appellant] is correct in law in grounding his claim for breach of contract as **general damages**." (Emphasis as in original)

She then ruled that there are no general damages awarded for breach of contract and the party claiming must have suffered specific loss. She expressed the view that from the evidence adduced, an amount could have been quantified or estimated. However, at page 251 of the record, she concluded this aspect of her reasoning as follows:

> "In light of my decision on this point, the other issues raised are now redundant."

[91] The Parish Court Judge made the following findings of fact:

> "1. Peaches Service Noble had no parking space at the Airport when the Agreement was signed. Hence the agreement was void.
>
> 2. [The respondent] with full knowledge of the agreement between [the appellant] and Peaches Service Noble wrote MBJ to re-assigned [sic] decal#041 belonging to Cornaldi Meghie's Chevy to [the appellant]. Therefore, the letter of [the respondent] to MBJ was the effective arrangement as per section 3.07 of the by-law.
>
> 3. [The appellant] at no time occupied a parking space belonging to Peaches Service Noble.
>
> 4. Peaches Service Noble did not qualify to exercise the right contained in rule 2.05 of the by-laws when the agreement was signed in 2012 and when operating in her own right in December 2017.
>
> 5. Decal #s are subject to change based on availability from time to time. It is the decal # which allows [respondent] members to park at the Airport."

[92] In conclusion she stated:

> "In keeping with the Findings of Fact, the Judgement of the Court is that the agreement between [the appellant] and the 2nd Defendant is void. [The appellant] is non-suited as against [the respondent]. [The appellant] is to pay [the respondent's] cost to be taxed if not agreed."

The appellant's submissions

[93] Mrs Cunningham Cuff, counsel for the appellant, submitted that in November 2012 the respondent issued a letter to the airport assigning a parking space to the appellant. The appellant operated from that space without any issue until in December 2017 when he was, without reason, denied access to the space. The appellant did not dispute that he had entered an agreement with Mrs Service Noble for use of a space which he believed that she held at the airport. The appellant did not, however, take up the use of that space as, subsequent to the agreement, the respondent assigned another space to him.

[94] In October 2017 Mrs Service Noble gave written notice that she was ready to use her parking space with effect from 1 December 2017. Counsel highlighted the fact that the Parish Court Judge had ruled that Mrs Service Noble did not have a parking space at the airport, and, as a consequence, the agreement which she had entered with the appellant was void. In addition, the Parish Court Judge had ruled that the appellant was non-suited as against the respondent as he had failed to plead and prove damages. She had also ruled that the effective arrangement in respect of the parking space was that entered pursuant to clause 3.07 of the respondent's bye-laws.

[95] Counsel emphasized that Mrs Service Noble had not filed an appeal against the decision made in the court below, and so the Parish Court Judge's findings of fact as it related to the status of the contract which she had signed with the appellant, remained unchallenged. She submitted further that the respondent did not have locus standi to challenge the findings as they related to Mrs Service Noble.

[96] On the question as to whether there was sufficient evidence before the Parish Court Judge which would have allowed for an assessment of damages, counsel conceded in the course of her oral submissions that the claim for general damages for breach of contract was inaccurate. Nevertheless, the appellant had given evidence as to the period when he had been unable to work, the number of days when he would usually work at the airport and his average earnings during the high and slow seasons.

[97] She submitted that it was not "crucial" for the appellant to state an exact figure in the particulars of claim, as the average income was the best evidence which could have been provided to the court. It was only a matter of arithmetic, as all the evidence which was needed was there to allow for a calculation of the appellant's loss. Counsel submitted that the appellant would have lost earnings of US$100.00 per day for 53 days during the high season. This would have amounted to US$5300.00. He would also have lost earnings of US$50.00 per day for 14 days amounting to US$700.00. The damages would not have exceeded the jurisdiction of the Parish Court and the appellant had continued to suffer damages even after the filing of the claim.

[98] Counsel submitted that the appellant's cause of action was for damages for breach of contract and an injunction. The Parish Court Judge erred when she did not proceed to consider and rule on whether there was a contract between the appellant and the respondent, and whether the appellant was entitled to an injunction as claimed. This meant that neither party had the benefit of a judicial pronouncement as to whether the relationship between the parties was of a contractual nature. She relied on **Lorna Taylor v Eric Williams and others** [2014] JMCA Civ 53 in which this court emphasised that a judge should give a decision on the issues in the case.

[99] According to counsel, section 181 of the Judicature (Parish Courts) Act ('the Act'), allows a judge to non-suit a plaintiff where satisfactory proof has not been given entitling either the plaintiff or the defendant to the judgment of the court. She argued that the Parish Court judge did not consider whether there was sufficient evidence before her to grant the injunction. It could not be assumed that the Parish Court Judge had found against the appellant on the issues, as having found that the appellant had failed to plead and prove damages, she said that the other issues became redundant.

[100] Counsel submitted that the appellant was a member of the respondent and the bye-laws of the respondent, as well as its established practises, formed the terms of the contract between them. She relied on **Bonsor v Musicians' Union** [1955] 3 All ER 518 in support of these submissions and highlighted that in that case the court found that the rules of the union constituted a contract between the members, and the claimant in that matter was entitled to recover damages for having been wrongfully expelled in breach of the union's rules. She also relied on **Abbott v Sullivan and Others** [1952] 1 All ER 226. Counsel argued that it was an implied term of the contract that the appellant would not be denied work without due cause and process.

[101] On the question as to whether the contract between the parties was breached, counsel submitted that it was the appellant's undisputed evidence that it was not the respondent's practice to take away from a member, a space previously assigned to him. Clause 7 of the bye-laws empowered the respondent to give directions to its members as to the running of motor vehicles, and the designation of stations at hotels, airports and other specific locations. Implicit in this clause is the understanding that a

member would not have a designation withdrawn arbitrarily. The respondent's sole justification for revoking the appellant's use of the space, was that the space belonged to another of its members, Mrs Service Noble. Since the court ruled that Mrs Service Noble did not have a space, this argument could no longer be sustained. The space was wrongly taken away from the appellant and this amounted to a breach of contract.

[102] The breach of contract affected the appellant's livelihood. Relying on **Nagle v Feilden and Others** [1966] 1 All ER 689, counsel submitted that an injunction was required to restore the appellant to the position in which he was prior to the breach of contract.

[103] In concluding, counsel asked that this court use the evidence presented by the appellant in the court below to make an award of damages to him for breach of contract, and also grant him injunctive relief so that he may resume his use of the parking space.

The respondent's submissions

[104] On behalf of the respondent, Mr Robb commenced by referring to the nature of the breach of contract to which the appellant had referred in his particulars of claim. The appellant had claimed that he had been restricted from accessing the airport lobby and that this action was not only malicious, but was also an attempt to expel him from the organization in breach of the bye-laws.

[105] Counsel submitted that there was no contract of employment between the parties. He further submitted that it was the practice of the respondent that a person should have a place where he parks in order to become a member. At the time when the appellant joined the respondent he had 'a park', but this was not at the airport.

[106] The evidence in the matter was that the appellant pursued Mrs Service Noble with a view to getting the parking space that belonged to her deceased father, entered into an agreement with her and paid her for the use of the space. He received receipts in the name A Service when he paid 'the park' fee and answered to the name A Service when work was being assigned to him. Counsel submitted that, in keeping with the rules by which the respondent operates, it is a long standing practice that parking spaces at the airport are passed down generationally. Over the years the respondent has operated in such a manner that, as long as the executive so allows, a person does not lose a parking space if they have lost a vehicle. The respondent therefore assigned the parking space to the appellant on the basis of the agreement that the appellant had entered with Mrs Service Noble.

[107] The Parish Court Judge however found, on the basis of a technical interpretation of rule 2.05 of the bye-laws, that Mrs Service Noble did not have a parking space at MBJ.

[108] Counsel argued that there was no evidence of the appellant "being near the airport" until his agreement with Mrs Service Noble. The appellant did not even know Mr McGhie to whom reference was made in the letter that the respondent sent to the airport to facilitate the respondent's use of the parking space. The sole document on which the appellant was relying was a single letter referring to a decal, which is a sticker on the vehicle by virtue of which the security at the airport will allow a driver to enter the restricted area there.

[109] In continuing to address the question as to whether there was a contract between the parties, counsel highlighted that although the appellant was a member

of the association since 2006, he made no mention of having a 'park' before 2012 and so he failed to establish an inherent right to a 'park' prior to 2012. Counsel submitted that the appellant could not enlist this court's inherent powers to give to him "what he never had in his own right". He highlighted that the appellant remained a member of the organization, had the requisite licenses to operate a taxi and earn a living, and was not precluded from doing so when he was unable to utilize the airport parking space. The case of **Bonsor v Musicians' Union** on which the appellant relied was therefore distinguishable, as in that case, the appellant, who was a musician, was prevented from working in his profession.

[110] Since the respondent had not prevented the appellant from working, it was not in breach of any contract whether express or implied. The evidence before the court was that the parking space assigned to the appellant was one belonging to Mr McGhie initially, then to Mrs Service Noble with whom the appellant had entered into agreement so he could use her parking space. The respondent could not be in breach of a contract to provide a parking space when it never had a contract with the appellant to provide same. The parking space was not the respondent's to give or take away.

[111] Counsel further submitted that the Parish Court Judge had addressed the issue of a contract between the appellant and the respondent, as inherent in her decision to non-suit the appellant on the basis that he had only claimed general damages, must have been a determination that there was a contract between the parties. In addition, since the Parish Court Judge ruled that the agreement between the appellant and Mrs

Service Noble was void, there was no breach that needed to be remedied or person to be compelled, and as such there was no need for an injunction to be issued.

[112] On the question as to whether there was sufficient evidence before the Parish Court Judge on which she would have been able to assess damages, counsel argued that the appellant had not stated a period over which he was claiming damages, did not state an amount, and did not claim for special damages or for loss of earnings. Loss of earnings fall within the head of special damages, and must be pleaded. It therefore had to be outlined in the plaint and particulars filed. This would enable the respondent to properly defend the claim.

[113] In the course of the trial the respondent was not aware of the loss, if any, which had been suffered by the appellant, and whether the claim fell within the jurisdiction of the Parish Court. Counsel relied on **Perestrello E Companhia Limitada v United Paint Co Ltd** [1969] 3 All ER 479 in support of his submission that the appellant had failed to plead and prove special damages, and consequently the Parish Court Judge did not have sufficient evidence before her to make an assessment of damages. Furthermore, the appellant had even claimed that he was seeking an award of general damages for the breach of contract. He argued that the appellant, had failed to plead and prove the alleged damages which was fatal to his claim.

[114] Counsel then addressed the question as to whether the Parish Court Judge erred when she non-suited the appellant on his claim against the respondent. He submitted that a judge non-suits a plaintiff when he fails to show he has a good cause of action or fails to produce any evidence and is unable to prove his case. After

referring to section 181 of the Act, and relying on **Lorna Taylor v Eric Williams and Others**, counsel submitted that the appellant's failure to prove an essential element of his claim was sufficient for the Parish Court Judge to non-suit him.

[115] Finally, counsel submitted that since the appellant failed to establish an essential element of his claim, failed to establish that any contract was breached by the respondent, and was non-suited, he would not be entitled to an injunction. If the court were to, however, find that a breach had occurred, the appellant having given up his parking decal and restricted area pass, a prohibitory and mandatory injunction could not be properly granted. As reflected in **Shepherd Homes Limited v Sandham** [1970] 3 All ER 402 (see pages 409 and 412), a mandatory injunction should not be granted unless a case was unusually strong and clear. This was not such a case. Any loss of income suffered by the appellant could be the subject of an award of damages.

[116] The respondent therefore asked that the appeal be dismissed.

The law

[117] It is a well-established principle of law that, when a question of fact has been tried by a judge without a jury, and it is not suggested that he has misdirected himself in law, an appellate court, in reviewing the record of the evidence, should attach the greatest weight to his opinion, because he saw and heard the witnesses, and should not disturb his judgment unless it is plainly unsound. The appellate court is, however, free to reverse his conclusions if the grounds given by him, therefor, are unsatisfactory by reason of material inconsistencies or inaccuracies, or if it appears unmistakably from the evidence that in reaching them he has not taken proper advantage of having

seen and heard the witnesses, or has failed to appreciate the weight and bearing of circumstances admitted or proved (see **Watt (or Thomas) v Thomas** [1947] AC 484).

[118] Further, at page 486 of **Watt (or Thomas) v Thomas**, Viscount Simon stated:

> "… an appellate court has, of course, jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached on that evidence should stand, but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of law), the appellate court will not hesitate so to decide, but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."

[119] In the case of **Industrial Chemical Co (Ja) Ltd v Ellis** (1986) 23 JLR 35, the Privy Council ruled that it is only in cases where the findings of the tribunal are not supported by the evidence, or it is clear that the tribunal did not make use of the benefit of having seen and heard the witnesses, that the appellate court would disturb those findings. Similarly, in **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21, it was stated, in part, at paragraph 12:

> "... It has often been said that the appeal court must be satisfied that the judge at first instance has gone '**plainly**

> **wrong**'. See, for example, Lord Macmillan in **Thomas v Thomas** [[1947] AC 484] at p 491 and Lord Hope of Craighead in **Thomson v Kvaerner Govan Ltd** 2004 SC (HL) 1, paras 16-19. This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: **Piggott Brothers & Co Ltd v Jackson** [1992] ICR 85, Lord Donaldson at p 92. **Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole.** That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. **Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence**: **Choo KokBeng v Choo Kok Hoe** [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169." (Emphasis added)

[120] This court has adopted and consistently applied the principle of law as enounced in **Watt (or Thomas) v Thomas**. Dukharan JA, in the consolidated cases of **Ronald Chang and another v Frances Rookwood et al** [2013] JMCA Civ 40, summarized the extent of this court's jurisdiction in reviewing factual decisions made by a judge in a court of first instance. At paragraph [26] he said:

> "These principles were followed with approval in **Watt v Thomas** [1947] AC 484. Lord Thankerton said at page 487 that, where a question of fact has been tried by a judge without a jury, and there is no question of his having misdirected himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so **unless it is satisfied that the decision of the judge cannot be explained by any advantage which he enjoyed by reason of having seen and heard the witnesses**. Lord MacMillan developed the same point at page 490. He said that the printed record was only part of the evidence. What was lacking was evidence of the demeanor of the witnesses and all the incidental elements which make up the atmosphere of an actual trial. He said at page 491:

> 'So far as the case stands on paper, it not infrequently happens that a decision, either way, may seem equally open. When this is so, and it may be said of the present case, then the decision of the trial judge, who has enjoyed the advantages not available to the appellate court, becomes of paramount importance and ought not to be disturbed. This is not an abrogation of the powers of a court of appeal on questions of fact. The judgment of the trial judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong'." (Emphasis supplied)

[121] The issues in this matter have been argued in the context of the respondent's bye-laws. The bye-laws of an association reflect the basis of a contract with its members. In **Bonsor v Musicians' Union**, the appellant was the member of a registered trade union. The union purportedly expelled him from its membership on the basis that he had failed to pay his weekly contributions. He was, thereafter, excluded from the union. He was granted a declaration that his expulsion was null and void, as well as an injunction restraining the union from acting on the purported expulsion, however, his claim for damages for breach of contract was dismissed. The House of Lords allowed his appeal against the dismissal of that aspect of his claim on the basis that his wrongful expulsion amounted to a breach of contract. Their Lordships gave different reasons as to why such conduct would amount to a breach of contract. It was either that it was impliedly agreed that the appellant would not have been expelled otherwise than in accordance with the union's rules, or that the rules of the union constituted a contract between the members, and the appellant was

entitled to recover damages for having been wrongfully expelled in breach of the union's rules.

[122] **Nagle v Feilden and Others** provides a useful perspective for a consideration of this matter. The headnote of the matter is sufficient for our purposes. It states:

> "The Stewards of the Jockey Club had a monopoly of control over horse-racing on the flat in Great Britain. In accordance with an unwritten practice of refusing to licence a woman as a trainer, they refused the appellant a trainer's licence, although they had granted such licences to her head lad. The appellant sued the stewards for a declaration that this practice was against public policy and for an injunction. On appeal against the striking out of her statement of claim as showing no cause of action.
>
> **Held:** there was an arguable case that by the common law of England there was a right to work at one's trade or profession without being arbitrarily and unreasonably excluded by anyone having the governance of it, that to exclude a woman from being a trainer of race-horses on the ground of her sex, at the present day, would be capricious and unreasonable, and that, therefore, the alleged practice of the stewards was contrary to public policy; accordingly the statement of claim had been wrongly struck out."

[123] Among other things, it will be necessary for me to determine whether, in the circumstances of this case, the respondent has, in light of its actions relating to the parking space in question, arbitrarily and unreasonably excluded the appellant from pursuing his right to work in breach of contract and/or the bye-laws.

[124] The question has also arisen in this matter as to when it is appropriate for a Parish Court Judge to non-suit a party. Section 181 of the Act, is relevant. It states:

> "The Parish Court Judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff of the defendant to the judgment of the Court."

[125] In **Lorna Taylor v Eric Williams and others** the Parish Court Judge non-suited the appellant, who had sought to recover possession of various parcels of land from the respondents. The judge had also non-suited the counter-claims of the respondents, who had sought orders of specific performance of agreements to purchase the respective parcels of land which were the subject of the appellant's claim. The appellant submitted that there was sufficient evidence for the Parish Court Judge to have given judgment in the case for the appellant, and she erred in deciding that there was none, and in failing to give judgment for the appellant. The issue in dispute turned on whether the appellant's brother had bound the estate when he entered into sale agreements with the respondents, and whether he was the qualified administrator of the estate at the relevant time.

[126] The Parish Court Judge decided that, in light of the absence of evidence as to the period when the appellant's brother was administrator, she did not know whether he was the administrator when he entered into the agreements, and as a result, the court was left "stifled in making a determination as regards the claim and counter-claim". Brooks JA, who delivered the judgment of the court, stated at paragraph [17]:

> "It is always desirable that tribunals make a decision one way or the other in respect of the evidence adduced before them. This point was pithily made in the judgment of Lewis JA in **Madgelin Griffiths v Diamond Mineral Water Co Ltd and Others** (1964) 8 JLR 567 when he said:
>
> > 'A judge must give a decision on the issues in the case.'
>
> That point was made in an appeal from the decision of a [Parish Court Judge] to non-suit a plaintiff, who was a passenger in a two-vehicle collision, because the [Parish Court Judge] 'was unable to make up his mind which vehicle was to blame'."

[127] After referring to section 181 of the Act, and the fact that the Parish Court Judge had relied on it in making her decision in the case, Brooks JA said at paragraph [19]:

> "Whether or not section 181 should be applied, must therefore, depend on the circumstances of each case. Whereas it is unlikely to be applicable in a negligence claim, such as a motor vehicle collision, the possibility exists for it to be applied in other cases. Whether it was properly applied in this case will be assessed below."

[128] At paragraph [35] of the matter Brooks JA concluded:

> "The learned [Parish Court Judge], although taking an unusual course, cannot be faulted for non-suiting both Miss Taylor and the respondents. The evidence of the time of Horace's grant could have been easily acquired and produced if the parties were so inclined. The learned [Parish Court Judge] should not have been required to guess the answer. Based on the reasoning that the estate could have been bound, she was right to leave the situation open for the litigation to be properly pursued."

[129] In **Paul Blake v Donald Williamson and Anor** [2016] JMCA Civ 55, Edwards JA (Ag) (as she then was) explained the legal result when a Parish Court Judge non-suits a party. At paragraph [37] she stated in a part:

> "… The legal result of doing so is that there would be no judgment in favour of either of the parties and the plaintiff could renew his plaint, if he later attains better proof of the claim…"

[130] It will therefore be necessary for me to examine the circumstances of this case to determine whether there was sufficient evidence to have enabled the Parish Court Judge to make a decision as to whether judgment should have been given in favour of either the appellant or the respondent, or whether she was correct to have non-suited the appellant.

[131] The appellant has asked this court to award him damages for breach of contract as well as injunctive relief. Although the appellant has asked the court to do so, his counsel has referred to the findings of fact made by the Parish Court Judge, in particular the finding of fact that his agreement with Mrs Service Noble was void. Counsel for the appellant has argued that Mrs Service Noble has not appealed that decision, and the respondent cannot challenge those findings as it has no locus standi to do so. In light of these submissions, it is necessary for me to examine the powers of this court upon the hearing of an appeal.

[132] Section 251 of the Act is relevant to that issue. It provides:

> "… an appeal shall lie from the judgment, decree, or order of a Court in all civil proceedings, upon any point of law, or upon the admission or rejection of evidence, or upon the question of the judgment, decree, or order being founded upon legal evidence or legal presumption, or upon the question of the insufficiency of the facts found to support the judgment, decree, or order; …
>
> And the Court of Appeal may either affirm, reverse, or amend the judgment, decree, or order of the Court; or order a nonsuit to be entered; or order the judgment, decree, or order to be entered for either party as the case may require; may assess damages and enter judgment for the amount which a party is entitled to, or increase or reduce the amount directed to be paid…or remit the cause to the Court with instructions, or for rehearing generally; and may also make such order as to costs in the Court, and as to costs of the appeal, as the Court of Appeal shall think proper, and such order shall be final:
>
> Provided always, that no judgment, decree, or order of a Court shall be altered, reversed, or remitted, where the effect of the judgment shall be to do substantial justice between the parties to the cause…"

[133] The powers of this court on the hearing of an appeal are also outlined in rule 2.15 of the Court of Appeal Rules, which states:

"In relation to a civil appeal the court has the powers set out in rule 1.7 and in addition-

(a) …

(b) power to-

(a) affirm, set aside or vary any judgment made or given by the court below;

(b) give any judgment or make any order which, in its opinion, ought to have been made by the court below;

(c) remit the matter for determination by the court below:

(d-h) …

(3) The court may reduce or increase the amount of any damages awarded by a jury.

(4) The court may exercise its powers in relation to the whole or any part of an order of the court below."

[134] In light of the above provisions it is open to this court to, if the evidence allows, make an award of damages (see **Noranda Jamaica Bauxite Partners v Thomas (Mannaseh) and Another** [2020] JMCA Civ 1 at paragraph [72] and **Titina Costley v Sunlight United Services** [2020] JMCA Civ 12 at paragraphs [25]- [27]).

[135] It appears to me, however, that if this court is to consider whether to award damages to the appellant and order injunctive relief, in a case where the Parish Court Judge had non-suited the appellant, it cannot be bound by findings of fact that impact the question as to whether the appellant is entitled to the remedies it seeks.

The bye-laws

[136] In the course of the hearing before the Parish Court Judge, the bye-laws made by the respondent's board of directors were entered into evidence as Exhibit 3. I will highlight certain of its provisions. The respondent operates through various

geographical zones called chapters. Its members carry on business as tourist-taxi operators. The word "motor vehicle", where it appears in the bye-laws:

> "means a motor vehicle used by a member in his business as a contract carriage operator in the tourist industry."

[137] Paragraph 2.03 of the bye-laws outlines the circumstances in which a person ceases to be a member of the respondent. They include where a member is found by its disciplinary committee to have breached paragraph 5.09 (participating or assisting in a business in competition with the business of the respondent), is expelled after being found guilty of an offence by the disciplinary committee, resigns, is declared a bankrupt or is convicted of a criminal offence of violence or dishonesty by a court in Jamaica.

[138] Paragraph 2.05 came into focus in the trial. It states:

> "On the death of a member or on a member being found to be of unsound mind, his estate or guardian will have the right to operate the said vehicle providing his estate or guardian as the case may be is in a position to comply with the rules and regulations of the Association."

[139] The appellant also relied on paragraph 3.07 of the bye-laws which provides that the chapter will be run by the executive committee, who is responsible for the general administration and management of its affairs. In particular, the executive committee shall give its members directions concerning the running of motor vehicles, the designation of stations at hotels, airports, piers and other specific locations.

[140] Paragraph 5.05 of the bye-laws requires all members to follow the directions of the executive and its authorized agents in the conduct of the association.

[141] A number of the bye-laws also address members' obligations in respect of the motor vehicles. These include:

i. Obligations to not sell or dispose of their motor vehicles within a period of three years from the date of acquisition unless the Ministry with responsibility for tourism so permits;

ii. Keeping all vehicles in the same colour;

iii. Insuring all vehicles;

iv. Keeping the vehicles in excellent working order and displaying their membership cards, the number of the car and a rate map; and

v. Permitting members of the Jamaica Tourist Board to inspect the vehicles.

[142] Paragraph 7 of the bye-laws addresses disciplinary proceedings, while paragraph 8 outlines the appellate process to be followed, if necessary.

[143] There is no provision within the bye-laws which specifically refers to the grant, withdrawal, acquisition or disposal of rights to parking spaces.

Analysis

[144] The grounds of appeal raise a number of issues including:

i. whether there was sufficient evidence in proof of a contract between the appellant and the respondent

in respect of the provision of a parking space at the airport;

ii. whether the respondent breached that contract;

iii. if yes, whether the appellant had proved his loss; and

iv. whether it was appropriate for the Parish Court Judge to have non-suited the appellant on the basis that his claim was incorrectly grounded in general damages, and whether he was entitled to an injunction in the terms sought or at all.

[145] Depending on the conclusion at which I arrive on issue (i), it may not be necessary to proceed to consider the remaining matters.

[146] The Parish Court Judge outlined certain matters which were not in dispute and which are critical to the view at which I have arrived. In light of these undisputed matters, in particular those outlined above in paragraph [84] items [i]-[viii], the decision of the Parish Court Judge, in my respectful view, cannot be explained by any advantage which she enjoyed by reason of having seen and heard the witnesses. It will be noted that the appellant and Mrs Service Noble did not differ in their evidence on these undisputed matters. The crux of the matter is the manner in which the Parish Court Judge treated with this evidence.

[147] The Parish Court Judge analysed paragraph 2.05 of the bye-laws. Upon review of that paragraph, it is correct, as the Parish Court Judge observed, that it refers to

the right of a now deceased member's estate to operate a vehicle which he previously operated. Arnold Service was a member of the association, and after his death, he left a vehicle. In accordance with paragraph 2.05 his estate could have continued to operate that vehicle.

[148] The respondent's bye-laws, as has been previously indicated, do not however specifically address the grant, acquisition, disposal or transfer of parking spaces. Importantly, paragraph 2.05 does not refer to the right to utilize a parking space whether at the airport or elsewhere. It appears that the respondent had, by custom, treated persons' parking entitlements in a manner similar to how they treated with the right of a deceased member's estate to continue operating the vehicle. Persons who were entitled to a parking space were able to agree to allow others to use them. Once informed of such an agreement, the respondent would facilitate use of the parking space in question.

[149] The fact that this arrangement was not specifically addressed in the bye-laws does not mean that it is an illegal practice. Many organizations develop practices and policies which are not outlined in their constituent documents, and there is usually no issue if these practices do not contravene the bye laws or, in this case, Jamaican law. Although in the instant case it is not necessary for me to make a definitive finding on the issue of the practice relating to the "inheritance" of parking spaces or the rental of parking spaces, it seems to me that there is nothing in the bye laws that would prevent such a practice.

[150] The parking spaces at the airport are clearly prized as they are limited in number (only 66 of them). As was the case with the appellant, there are members of

the respondent who do not have a parking space at the airport. Contrary to what the appellant suggested in his evidence, it is not correct that "by being a member of the respondent" a person is automatically entitled to a parking space at the airport. It is clear on the evidence that Arnold Service, before his death, was entitled to one of these prized parking spaces at the airport. Upon his death in 2012, as was the custom of the respondent, his family, through his daughter who was seen as representing the estate, was treated as having inherited the parking space and in fact exercised control over its use.

[151] The appellant, a member of the respondent since 2006, as well as a former member of its executive, was, in all likelihood, aware of this custom. This would account for his approaching Mrs Service Noble after her father died, in order to enter into an agreement with her for the use of the parking space at the airport. He aggressively pursued the conclusion of the agreement with Mrs Service Noble, preparing it in writing and arranging for it to be witnessed by a JP. It is also clear that the respondent, at all material times, acted on the basis that Mrs Service Noble had inherited the right to use the parking space, which was previously utilized by her father, Arnold Service, at the airport.

[152] Having acquired access to the parking space, in accordance with the custom of the respondent, the appellant sought to distance himself from the agreement with Mrs Service Noble. His argument that although he had entered into an agreement with her, he did not get use of her father's parking space, is incredible. This is in light of the fact that the receipts which the respondent issued to him when he paid the parking fee were all in the name "A. Service", the deceased father of Mrs Service Noble, and

he answered to the name A Service when work was being assigned to him at the airport. In addition, he continued to pay Mrs Service Noble a monthly sum of US$80.00 or US$100.00, until she told him that she was ready to utilize the parking space for herself. It is incredible to believe that he would have continued paying Mrs Service Noble for a period of five years, if he had not in fact been able to use her father's parking space. Furthermore, he was only prevented from using the parking space after Mrs Service Noble gave him notice that she would be utilizing it as of 1 December 2017. After the appellant regained access to the parking space due to the interim injunction, upon completion of a job assigned to him, he signed under the name "P. Service" at the airport (see pages 51 - 52 of the record). All of these events show that the appellant had not been assigned a parking space in his own right.

[153] The letter which the respondent wrote to the airport so as to allow the appellant to utilize the parking space at the airport, was consequent on the letter provided by Mrs Service Noble to it, consenting to the appellant's use of the parking space, as well as the agreement which the appellant had signed. When the appellant distanced himself from the agreement which he had entered with Mrs Service Noble, he removed the basis on which he had been allowed access to one of the 66 parking spaces at the airport. The respondent had not allocated a parking space to the appellant in his own right, and the appellant was fully aware of this.

[154] If the agreement between Mrs Service Noble and the appellant is void, as was found by the Parish Court Judge, the basis of the letter written to the airport by the respondent falls away. The actions of the respondent would have been carried out on

a mistaken basis. The appellant could not benefit from this letter when he is fully aware of the reason why he was allowed to utilize the parking space at the airport.

[155] On the other hand, if the agreement with Mrs Service Noble was valid, it would have been terminated by the letter dated 1 November 2017 from Mrs Service Noble to the appellant in which she indicated that the parking space would no longer be available for the appellant's use with effect from 1 December 2017.

[156] With due deference to the Parish Court Judge, there was no basis on which she could have properly found that the respondent was contractually bound to provide the appellant with a parking space at the airport in his own right. Membership of the respondent does not ipso facto lead to a person having a parking space at the airport. The respondent and its members provide services to the pier, hotels and attractions which require transportation for guests. The appellant's circumstances prove that membership of the respondent does not necessarily translate to having a parking space at the airport, as he was a member from 2006 and did not have any access to a parking space there until subsequent to the agreement which he had entered with Mrs Service Noble.

[157] Where a person was entitled to a parking space at the airport, he would receive a decal and a RAP. The entitlement to a parking space is a prerequisite before the respondent facilitates the provision of these two documents. The parking spaces are not numbered. They are finite (only 66).

[158] It does appear to be correct, as the appellant testified, that it was not the respondent's practice to take away from a member, a parking space previously

assigned to him. This would clearly apply to a parking space assigned to a member in his own right. The appellant pursued his case on the basis that the respondent contracted to provide him with a "park" at the airport in his own right and then breached that contract. The evidence does not support such a finding. The entire matter was inextricably linked with the agreement which he had entered with Mrs Service Noble.

[159] In addition, the appellant had not proved that the respondent had treated him in a manner which was in breach of the bye-laws. The appellant was neither expelled from the organization, nor was he prevented from benefitting from the privileges of membership which he had enjoyed over the period 2006 when he became a member, until 2012 when he gained access to a parking space at the airport by virtue of the agreement he had entered with Mrs Service Noble. He was not arbitrarily or unreasonably or in any way excluded from pursuing his work.

[160] This was a case in which there was sufficient evidence before the Parish Court Judge for her to have determined whether there was a contract between the parties and whether it had been breached. The Parish Court Judge did not make an express finding that there was a contract between the appellant and the respondent for the respondent to provide the appellant with a parking space at the airport. She, however, found that it was the letter which the respondent had written to the airport which enabled the appellant to access parking at the airport. I agree with the respondent that this implies that the Parish Court Judge had found that this was the basis of a contract between the parties.

[161] In my view, this was an error for the reasons outlined above. In short, once the court found that the agreement with Mrs Service Noble was void, the whole basis on which the appellant had been allowed to use the parking space fell away. There was no basis on which the appellant was entitled to park at the airport in his own right.

[162] It is therefore my view, with respect, that the Parish Court Judge failed to appreciate the weight and bearing of the circumstances which were admitted and proved before her. The evidence as a whole cannot reasonably be regarded as justifying the conclusions to which she arrived as regards the basis on which the appellant gained access to the parking space at the airport.

[163] The Parish Court Judge ought to have delivered judgment for the respondent, as there was sufficient evidence for her to determine whether the respondent was contractually bound to provide the appellant with a parking space at the airport in his own right. On the evidence, the respondent had no such contractual obligation. The Parish Court Judge also erred in her conclusion that it was the letter written by the respondent to the airport which conferred the appellant with an entitlement to park at the airport.

[164] In the circumstances it is not necessary for me to consider the other issues which were raised in this matter.

[165] In accordance with the powers of this court, I therefore propose that the decision by the Parish Court Judge, whereby she entered a nonsuit between the parties, be set aside and in its stead judgment be entered for the respondent with the

costs below to the respondent to be taxed if not agreed, along with costs of the appeal in the sum of $100,000.00.

PHILLIPS JA

ORDER

(1) The appeal is dismissed.

(2) The 28 June 2019 decision made by Her Honour Miss Annette Austin, Parish Court Judge for the parish of Saint James, whereby she entered a nonsuit between the parties, is set aside, and in its stead judgment is entered for the respondent.

(3) Costs to the respondent in the court below to be agreed or taxed, and costs of this appeal are awarded to the respondent in the sum of $100,000.00.