# JAMAICA

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO: 75 & 76/00, 9 & 97/01**

**BEFORE: THE HON. MR. JUSTICE FORTE, P.**
**THE HON. MR. JUSTICE LANGRIN, J.A.**
**THE HON. MR. JUSTICE SMITH, J.A. (Ag.)**

**BETWEEN:** **MICHAEL CARTER (Trading as Michael Carter Partnership)** **PLAINTIFF/APPELLANT**

**AND** **HAROLD SIMPSON ASSOCIATES (ARCHITECTS) LIMITED** **DEFENDANT/RESPONDENT**

**Dennis Morrison, Q.C. instructed by Ripton McPherson of Ripton McPherson & Co for the Appellant**

**Ms. Carol Davis instructed by Davis, Bennett & Beecher-Bravo for the Respondent**

**1st, 2nd November 2001 & March 22, 2002**

**FORTE, P:**

The issues in this appeal are born out of the merger by both parties into a Joint Venture Partnership Agreement (the "Agreement") on November 7, 1994. The parties came together in order to undertake jointly, a project for the Urban Development Corporation ("UDC") in which they would provide architectural services for the erection of the New Civic Centre in Montego Bay in St. James. On September 11, 1996 the Agreement was varied by an agreement that all architectural services required by the UDC after the

signing of the Construction Contract would be done by the appellant. Clause 15.01 of the Agreement provided that any dispute arising thereunder should be referred to arbitration. In the effluxion of time a dispute arose in relation to "short payments of fees" by Carter to Simpson. As a result, the dispute was referred to Arbitration and Mr. Maurice Stoppi was appointed Arbitrator.

On the 23rd September, 1998, the Arbitrator handed down his award as follows:

> "**7.0 AWARD**
>
> 7.1 NOW I, MAURICE STOPPI, the Arbitrator appointed as aforesaid, having considered the representations of the parties, their witnesses and documents submitted by them in evidence do HEREBY AWARD AND DIRECT that the JOINT VENTURE IN THE FIRST INSTANCE AND THEN THE RESPONDENT do forthwith pay to the CLAIMANT, the total sum of THREE MILLION, SEVEN HUNDRED AND FORTY ONE THOUSAND, THREE HUNDRED AND SEVENTEEN DOLLARS AND SIXTY FIVE CENTS (J$3,741,317.65) in full and final settlement of items shown in CLAIMANT'S SUMMARY OF CLAIM of July 28th, 1998 and all other issues in this reference as follows:
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> | | | |
> |---|---|---|
> | 1. | SHORT PAYMENT ON FEES | $ |
> | 3. | DUE ON NEW TENDER PRICE (both items including General Consumption Tax) | 2,680,186.65 |
> | 2. | ARCHITECTURAL COSTS FOR WORK DONE BETWEEN 1973 AND 1974 | I make no Award in respect of this item |
> | 4. | LUMP SUM FOR POST-CONTRACT ARCHITECTURAL FEES | - SEE 7.3 - |
> | 5. | INTEREST | 1,061,131.00 |
> | | TOTAL | $3,741,317.65 |

> 7.2 I have further considered the representation and evidence of the Respondent in respect to their counter-claim dated 18th June, 1998 with which I find no merit. I therefore make no award in respect of Respondent's Counter-claim.
>
> 7.3 AND I FURTHER AWARD AND DIRECT that in accordance with the notes of a meeting between the parties held on September 11, 1996 and in pursuance of Clause 10.01 of the Joint Venture Partnership Agreement dated November 7, 1994 AND not having received the submission referred to in 6.2.2 above AND in keeping with the wishes of the parties to mutually determine their Joint Venture Partnership Agreement, such termination shall be effected in the following manner.
>
> 7.3.1 Within 60 calendar days of the signing of the Construction Contract between the Employer and Contractor for the construction of the Montego Bay Civic Centre, the Respondent shall pay to the Claimant, the sum of **THREE HUNDRED AND SEVENTY ONE THOUSAND, SIX HUNDRED AND FIFTY TWO DOLALRS ($371,652.00)**
>
> 7.3.2 Upon receipt of payment of the above amount by the Claimant, the Joint Venture Partnership Agreement of November 7, 1994 shall be deemed to be terminated and shall thereafter be of no effect."

An application made to set aside this award was granted in the Supreme Court by Ellis J on the 7th February 1999, but on the hearing of the appeal on the 30th July, 1999 this Court set aside the order of Ellis J and re-instated the award. The appeal was allowed basically because the Court of Appeal concluded that Ellis J fell into error by examining the Agreement on the basis that it was "incorporated" in the award and by so doing found that

there was an error on the face of the award. I only need make reference to the conclusion of Rattray P.:

> "The Joint Venture Agreement therefore is not incorporated in the award and the trial judge was not permitted to roam through its contents in search of a place to anchor his findings that there was an error on the face of the award. His judgment therefore which reads inter alia – 'there is in the award a plethora of references to the joint venture agreement' cannot be supported; firstly because it is incorrect in fact and secondly because his conclusion is not supportable in law."

Thereafter the matter came before Harris, J who on the 20th August 1999 ordered as follows:

> "That the Plaintiff may have leave of this Honourable Court pursuant to Section 13 of the Arbitration Act for the Award of the Arbitrator herein to be enforced in the same manner as a judgment of the Court.
> Matter remitted to Arbitrator to amend award to place it in a form in which it will be enforceable."

The award was then remitted to the Arbitrator for the purpose stated in that Order. This resulted in a series of disputes, all of which are now before us in these consolidated appeals.

On the 23rd August 1999, the respondent filed a Writ of summons and Statement of Claim claiming the amount stated, in the Award. A Defence thereto was filed on 13th September 1999.

In the meantime in keeping with the Award of Clause 7.3.1 on the 24th December 1998, the appellant tendered a cheque for $371,652.00 and in the letter enclosing the cheque, indicated that the partnership was now terminated. In a letter in response dated 28th December, 1998, attorneys for the respondent returned the cheque, stating that the Partnership could

not be dissolved until the issues between the parties were resolved. The cheque was again tendered on the 1st September 1999 and on this occasion the respondent's attorney acknowledged receipt but stated that it was not being accepted in pursuance of Clause 7.3.1 of the Award but as part payment for the total sum due under the Award.

The Award was duly remitted to the Arbitrator in keeping with the Order of Harris J, and on the 4th November, 1999 the Arbitrator handed down the following Award:

> "NOW, I MAURICE STOPPI, the arbitrator, having considered the representation of the parties, their witnesses and documents submitted by them in evidence hereby Awards and Directs that:
>
> (1) The joint venture in the first instance and then the Respondent shall pay forthwith to the Claimant, the total sum of $3,741,317.65 in full and final settlement of items claimed by the Claimant in the Claimant's Summary of Claim dated July 28, 1998.
>
> The said sums are to be paid as follows:
>
> (i) The sum of $976,737.35 held in the account in the name of Simpson/Carter Joint Venture at Lets Investment Limited, 14a Market Street, Montego Bay, to be paid to the Claimant, Harold Simpson Associates (Architects) Ltd forthwith.
>
> (ii) The sum of $247,903.58 held in Account No. 0031310002492 in the names of Harold Simpson/Michael Carter at Citizens Bank, Montego Bay to be paid to the Claimant, Harold Simpson (Architects) Ltd forthwith.

(iii) That the sum of $2,516,676.72 and such further sums that may be due with regard to the award made on 23rd September, 1998, be paid by the Respondent Michael Carter to the Claimant Harold Simpson Associates (Architects) Ltd forthwith.

(2) No award is made in respect of the Respondent's counterclaim.

(3) The Joint Venture Partnership Agreement shall be determined as follows:

(i) on or before December 29, 1998, the Respondent shall pay to the Claimant the sum of $371,652.00.

(ii) upon receipt of the payment mentioned at 3(i) above, the Joint Venture Partnership Agreement of November 7, 1994 shall be deemed to be terminated and shall thereafter be of no effect."

A close examination of both awards reveal that they are substantially the same, the major difference being, the details concerning the proportion of the claim for $3,741,317.65 to be paid by the Joint Venture and from what source, and that to be paid by Michael Carter Associates. This the respondent maintained was done in accordance with the order of Harris J that the Arbitrator "amend the award to place it in a form in which it will be enforceable."

It should be remembered that the respondent before the Award was amended, had filed a Writ of Summons and Statement of Claim on the 23rd August, 1999 claiming the amount of the original Award together with $422,050.00 representing the Arbitrator's fee which the Arbitrator had ordered be paid by the appellant. In addition, the respondent claimed the

sum of $371,652.00 in accordance with the Arbitrator's Award concerning the termination of the partnership. He also claimed interest. To bring the claim in context with the Award, the respondent pleaded in the Statement of Claim, the following:

> "10. It was an implied term of the contract between the Plaintiff and the Defendant that the Plaintiff would pay any sum awarded to the Plaintiff by the arbitrator.
>
> 11. The Plaintiff has by letter dated 9th August demanded that the Defendant pay the sums as due, but the Defendant in breach of the contract between the Plaintiff and the Defendant has failed to pay the said sums or any part thereof."

On the 24th March 2000 after the Award was amended, the respondent filed a summons for Amendment of the Statement of Claim and for Summary Judgment. The amendment sought to make reference to the remittance of the Award to the Arbitrator, the purpose therefor, and the fact that the Award was amended in accordance with the order of Harris J. Importantly, it referred to amounts that had been paid on the Claim i.e. two sums (i) $976,737.35 and (ii) $247,903.58 making a total of $1,224,641.00 for which it gave the appellant credit.

It should be noted that these two amounts represented the amount ordered by the Arbitrator to be paid from the account in the names of Simpson/Carter Joint Venture at Lets Investment Ltd and the amount held on Account No 0031310002492 in the names Harold Simpson/Michael Carter at Citizens Bank, Montego Bay.

The summons to amend the Statement of Claim came before Beswick J. (Ag.) who ordered on the 26th June, 2000 that it be amended accordingly. The appellant now appeals from this Order: (SCCA 75/2000).

On the 30th June 2000 the Summons for Summary Judgment was heard by Marsh J. The appellant by affidavit resisted the Order for Summary Judgment and asked that it be dismissed so that the issues might be brought before the Court. Counsel for the appellant maintained that he had a good defence to the action and that no cause of action was disclosed in the Amended Statement of Claim and, in the alternative any cause of action arising from the award made on the 4th November, 1999 would have arisen after the date of the Writ of Summons and would therefore be unenforceable. On the 18th January 2001, Marsh J gave Summary Judgment for the respondent on the Amended Statement of Claim for the sum of $3,741,316.65 less the $1,224,461.00 that had been paid. The appellant now appeals also, from this Order: (SCCA 9/2001).

On 6th April 2000, Michael Carter filed an Originating Summons requesting inter alia, a declaration that the Joint Venture Partnership Agreement was terminated on the 24th December 1998 and that an account be taken of the monies paid into the partnership accounts. He alleged in his affidavit that there was an agreement in writing dated 11th September 1996 in which the parties agreed to vary the terms of the Joint Venture Agreement, and agreed that all Architectural Services required by UDC after the signing of the Contract of Construction would be done by him. The said Construction Contract was signed on the 29th September 1998. He also

maintained that the 24th December 1998 was the date upon which he had tendered to the respondent the cheque for $371,652.00 in pursuance of Clause 7.3.1 which declared that on payment of that sum the partnership would be deemed to be terminated. The appellant emphasized that since the 24th December 1998 he had carried out all Architectural services required by the UDC and the UDC had paid into the said Joint Venture Partnership accounts, fees for the said services rendered by him.

This Summons came before Beswick J (Ag.) on the 28th June, 2000 and was dismissed. The appellant now appeals from this Order: (SCCA 76/00).

On the 17th January 2001 the day before summary judgment was entered against the appellant, a Notice of Motion to set aside the Arbitrator's Award was filed. The records reveal that when the Arbitrator was dealing with the Award, on its remittal to him, the attorney for Michael Carter requested the Arbitrator to give a reasoned Award and to state a case for the decision of the Court on certain listed questions of law. The Arbitrator refused. In essence the questions dealt with whether the Agreement created a partnership, and the whole issue of taking of partnership accounts after dissolution. The Motion came on for hearing before Wellesley James J who dismissed it. In doing so, he found that the Award of the 23rd September 1998 was only partially remitted; that the Arbitrator was not rehearing but amending a part only of the Original Award; that the Arbitrator was right in his refusal to state a special case for the Court; that the Arbitrator did not make a new Award on the 4th November 1999 and the award was not bad in

law on the face of it. This forms the basis for one of the appeals now before us: (SCCA 97/01).

There are four appeals arising from issues which were born out of the Arbitration Award and the Amended Award made by the Arbitrator after remittance to him. There was an agreement to consolidate these appeals, and consequently they were all heard together.

**1. SCCA 75/2000**

This appeal challenges the Order of Beswick J (Ag.) allowing the application to amend the Statement of Claim. The gravamen of this contention is that the Award handed down after remission was in fact a new Award. Any cause of action arising therefrom would have arisen after the date of the Writ of Summons and consequently could not be the subject of an amendment to the Statement of Claim.

In support of its contention that the Award after remission was a new or fresh Award, counsel for the appellant relied on the case of ***Johnson v. Latham*** (1851) LJR 236. The relevant ratio in the case upon which the appellant relies is conveniently set out in the headnote at page 236. It reads:

> "The original award, after deciding all matters in difference, added, that for better defining the height of the weir such permanent marks should be placed as B. should direct. This direction being held bad as a delegation of authority, the Court remitted the award to the arbitrator for the purpose of reconsidering the prospective directions that should be given for the purpose of defining the depth at which the defendant might maintain his weir. The arbitrator, without calling the parties before him, made a new award, repeating verbatim the terms of the old award, that the plaintiff should pay the costs

> "of this my reference and of this my award," and as to all other matters, except as to the prospective directions, on which he awarded as above stated.
>
> *Held,* that, the arbitrator had adopted a proper course in making a new award, repeating the old adjudication as to the matters not sent back to him, and the adjudication on the matters remitted for consideration."

On the question of costs it was argued:

> "that a reference back of one of several matters referred, by virtue of an order of reference authorizing the Court so to do, renders the first award inoperative, and that although the arbitrator might not alter his first award upon any matter not referred back, still he must make a fresh award repeating the first award as to those matters and deciding anew that which was so referred back; that the discretion of the arbitrator over the costs of reference and award is to be exercised at the close of the reference, and at the time of making the award, and that as the first award so became null by the reference back, the allocatur made thereon was also null."

Erle, J. opined that:

> "that argument must prevail but as the last award appeared to be so expressed as to give the same costs as had been given by the first award, the objection to the allocatur was merely formal."

The appellant relied substantially on the principles expressed in the arguments which Erle, J. accepted. It should be noted, however that those arguments related to the question of costs in a case in which the award had been remitted to the Arbitrator for the reconsideration of a material aspect of the differences that existed, the resolution of which the Arbitrator had delegated to another person i.e. 'B'.

Russell on the Law of Arbitration 11th Edition speaks at page 350 to the discretion of a Court to interfere with an Arbitrator's Award. It sets out the four grounds for remission. The passage states:

> "The court has a general discretion to remit an award to the reconsideration of the arbitrator or umpire. This discretion is in general exercisable upon substantially the same grounds as will justify the setting aside of an award.
>
> Thus the ground for remission have been stated as follows: '(1) where the award is bad on the face of it; (2) where there has been an admitted mistake and the arbitrator himself asks that the matter may be remitted; (3) where there has been misconduct on the part of the arbitrator; and (4) where additional evidence has been discovered after the making of the award.'
>
> But these four grounds are merely guides to the exercise of discretion, and are not exhaustive, ...".

Diplock J (as he then was) in the case of ***Margulies Brothers Ltd v. Dafnis Thomaides & Co (U.K.) Ltd*** [1958] 1 WLR 398, at 402 expressed the view that a remittal could be made so that the Award could be placed in a form which is capable of being enforced in the same manner as a judgment. He said:

> "... in my view, an implied term of an arbitration agreement made since 1889 (when the provision for enforcing an award in the same manner as a judgment was first introduced) that an award for the payment of money – as contrasted with a mere declaratory award – shall be in a form which is capable of being enforced in the same manner as a judgment. That this remedy should be available is one of the main purposes of an arbitration agreement, and I have no hesitation in holding that I have jurisdiction to remit an award for the payment of money so that it may be amended to put it in a form in which it will be so enforceable. If this extends the categories in which cases can be

> remitted to the arbitrator which was approved in the Montgomery Jones case, I will cheerfully, encouraged by Fletcher Moulton L.J. in Baxter's case, so extend them: ...".

It is clear that Diplock J, who would have made the remittal, for the same purpose that Harris, J did, considered it a reference merely to amend the award. In contrast, the remittal in the ***Johnson v. Latham*** case (supra) was for reconsideration of a substantive matter which the arbitrator had failed to address in his original award. In making the reference in this case, like Diplock, J. did in the ***Margulies*** case (supra) the learned judge remitted the award merely to have it put in a form in which it could be enforceable as a judgment and not for the reconsideration of any matters which went to the substance of the award. That being so, it is my judgment that the later award would not be a new award, but an award which is an amendment to the first award i.e. an amended award.

In those circumstances the cause of action pleaded in the Statement of Claim would be the same as the amended Statement of Claim, and consequently would refer back to the date of the Writ of Summons.

This Court dealt with this issue in the unreported case of ***Esso Standard Oil S.A. Ltd v. John Aird*** SCCA 3/99 delivered on the 9th February 2000 in which I stated:

> "It is a basic principle that amendments to Writs and Statements of Claims can be made at any time during the process of the determination of the matters in dispute between the parties (See Title 27 Section 259 of the Judicature (Civil Procedure Code) Law). Any such amendment, whenever made dates back in time to the filing of the writ. It follows then that amendments must relate to matters, which occurred before the date of the writ. However an

> amendment may be granted to allege facts arising subsequent to the Writ or Statement of Claim where the amendment relates to matters going to the remedy claimed."

The amendments to the original Statement of Claim applied for in the instant case, did nothing more than give more details of the amount due to the respondent, and gave credit for amounts paid since the filing of the writ. In any event, the cause of action related not to the amendments sought, but to the breach of contract which the Arbitrator found to have occurred. As the later award is not a new or fresh award, the original award would in my view be still subsisting at the time of the application for the amendments to the Statement of Claim to put it in a form consistent with the later award. In the event this would not be a new cause of action as contended for by the appellant.

**2. <u>Appeals 9/2001 and 76/2000.</u>**

I turn now to SCCA 9/2001 which challenges the order of Marsh, J entering summary judgment against the appellant on the amended Statement of Claim. The grounds of appeal argued were thirteen in number some of which have already been discussed in this judgment in relation to the amendment of the Statement of Claim. There was a complaint that the learned judge erred in law in holding that the amendment to the Award of the Arbitrator delivered on the 4th November 1999 was a mere formality. We have already seen that the later award was nothing more than an amendment to the original award. The summary judgment was given on the basis of an award by the Arbitrator to whom both parties had assigned the power to resolve their differences and the result of which they agreed to

abide. The Courts held that there was no error on the face of the Award so that after it was placed in a manner in which it could be enforced, the respondent was entitled to sue upon it. In my view there could not be, in those circumstances, any defence which would warrant a trial. The appellant, however raised the argument concerning the partnership agreement in the following ground:

> "The Learned Judge erred in Law in ordering that judgment be entered for the Plaintiff against the Defendant when the claim of the Plaintiff arose out of a partnership agreement between the Plaintiff and the Defendant when no partnership accounts had been taken."

This was an award which by the agreement of the parties required no reasoned award. It could only be remitted to the Arbitrator in the circumstances of this case, if it were bad on the face or as Harris J found, there was need for an amendment to make it enforceable as a judgment. Once the Arbitrator had perfected the Award, it could be sued for in the Courts. There can be no reference back to the partnership agreement between the parties since that agreement was never incorporated into the Award. Consequently, the nature of the partnership is not ascertainable. What we do know is that the parties agreed that any disputes between them under the Agreement should be referred to Arbitration. The Arbitrator in his Award makes reference to the "provision at 15.01 for unresolved disputes to be resolved by arbitration by reference to a single Arbitrator by consensus". However, Appeal #76/2000 arose out of a refusal by the learned judge to grant the following orders sought by the appellant:

> "(a) A declaration that the Joint Venture Partnership agreement between the plaintiff and the Defendant dated November 7, 1994 was terminated on the 24th day of December, 1998.
>
> (b) A declaration that the Plaintiff is solely entitled to all monies paid into the Partnership account at Lets Investment Limited Montego Bay and the Citizens Bank Montego Bay, Account No. 0031310002592 by the Urban Development Corporation for Architectural Service rendered for post contract work in relation to the Montego Bay Civic Centre Project and interest thereon at such rate as this Honourable Court shall see fit.
>
> (c) An order that:
>
> (1) An account be taken of the monies so paid into the said accounts.
>
> (2) The amounts so found to have been paid into the respective accounts be paid to the Plaintiff."

In support of the Originating Summons, the respondent deponed the following in paragraph 4 of his affidavit:

> "4. By Agreement in writing dated the 11th day of September, 1996 the Plaintiff and the Defendant agreed to vary the terms of the Joint Venture Agreement and further agreed that all Architectural services required by the Urban Development Corporation with respect to the said project after the signing of the Contract for the Construction of the said project would be done by the Plaintiff upon the terms set out therein."

He exhibits the terms of the "agreement in writing" of the 11th September 1996 which reads as follows:

> "Meeting held with Michael Carter and Harold Simpson on September 11, 1996 at 9.00 a.m. Re: Old Court House/Civic Centre
>
> 1. Supervision to be done by M.C.P. (the appellant)

2. Present cheque split 50% x 50% - Total of Cheque $400,757.30

3. Robert Mallasch to be paid by next cheque. (theatre cheque) by M.C.P.

4. H.S.A. (the respondent) to be paid 10% from post contract cheques and M.C.P. to be paid 90% of post contract cheques for doing the work, except that if there is escalation over the contract sum, H.S.A. will be paid 15% and M.C.P. 85%."

This variation of the Agreement apparently sought to bring the partnership to an end in the signing of the Construction Contract. It is obvious that issues which arose out of the variation were also referred to the Arbitrator. In the Award in considering an amount to be awarded to the respondent for "Lump Sum for Post Contract Architectural Fees" – he dealt with it in the following manner after granting the general claim:

> 7.3. AND I FURTHER AWARD AND DIRECT that in accordance with the notes of a meeting between the parties held on September 11, 1996 and in pursuance of Clause 10.01 of the Joint Venture Partnership Agreement dated November 7, 1994 AND not having received the submission referred to in 6.2.2 above AND in keeping with the wishes of the parties to mutually determine their Joint Venture Partnership Agreement, such termination shall be effected in the following manner.
>
> 7.3.1. within 60 calendar days of the signing of the Construction Contract between the Employer and Contractor for the construction of the Montego Bay Civic Centre. The Respondent shall pay to the Claimant, the sum of **THREE HUNDRED AND SEVENTY ONE THOUSAND, SIX HUNDRED AND FIFTY TWO DOLALRS ($371,652.00)**

> 7.3.2 Upon receipt of payment of the above amount by the Claimant, the Joint Venture Partnership Agreement of November 7, 1994 shall be deemed to be terminated and shall thereafter be of no effect."

The Arbitrator therefore effectively brought the Agreement to an end and to take effect 60 calendar days after the signing of the Construction Contract which took place on the 29th September, 1998. This he did "in keeping with the wishes of the parties" but declaring obviously at the request of the parties, the manner and time it should be terminated. In making the Award, the Arbitrator awarded to the respondent an amount to which he found he was entitled. Mr. Morrison, Q.C. for the appellant, however contends that the Award ordering as it did, that certain payments should be made from the Accounts of the partnership was in error, as no partnership accounts had been taken.

It is to be remembered that the dispute that went to Arbitration arose out of certain non-payments to the respondent by the appellant. The Arbitrator was therefore seized with the responsibility to decide how much of that claim, if any, the respondent was entitled to be paid. In doing so in the original Award, he named the amount and ordered that it be paid by "the JOINT VENTURE IN THE FIRST INSTANCE AND THEN THE RESPONDENT do forthwith pay to the CLAIMANT." So from the time of the original Award and without any objection from the appellant, he ordered that a portion, if not all of the amount due to the respondent should be paid by the Joint Venture. There is a clear inference, therefore that at that time there was no dispute as to whether the monies could be paid wholly or partially from the accounts of

the partnership. All the circumstances suggest that the parties having agreed to abide by the Award, must also have foreseen that the accounts of the partnership would be burdened by any payments to be made. Yet, there was no request at that time for partnership accounts to be undertaken. The conclusion must be that this was a matter also left for the consideration of the Arbitrator. In the absence also of a reasoned award, it cannot be concluded that the Arbitrator did not address his mind to this aspect before making his award. In my judgment, in all the circumstances, there was no necessity on the facts of this case, to order partnership accounts to be done, before making the Award, and consequently the learned judge was correct in entering summary judgment.

**3. <u>Appeal 97/2001</u>**

This concerns the accusation made by the appellant as to the misconduct of the Arbitrator, in not referring the matter back to the Court, to answer certain questions presented in writing to him by the appellant. The Arbitrator was faced with this application after his original award was sent back to him for Amendment. He refused to do so, on the basis that he had already arrived at his conclusions in the original award and was therefore at the time merely concerned with amending the Award so that it could be enforceable as a judgment. In my view the Arbitrator was correct. In the original award, he had made an Order for the payments to be made by the Joint Venture, and was at the time of the application merely engaged on the basis of affidavit evidence, in ascertaining what portion of the total sum due, could be met by the accounts held by the Joint Venture. It was too late, in

my judgment, for the Arbitrator to entertain such an application, and I would agree with the learned Judge that he (the Arbitrator) would not be guilty of misconduct so as to vitiate the Award.

In the event I would dismiss all the appeals consolidated in this hearing and affirm the orders made in the Court below.

**LANGRIN, J.A.**

I agree that these appeals should be dismissed for the reasons set out in the judgment of the Learned President.

**SMITH, J.A. (AG.)**

I have had the advantage and privilege of reading the draft judgment of the learned President. I agree with it and agree that the appeals should be dismissed. I find it unnecessary to say anything of my own.