IN THE SEYCHELLES COURT OF APPEAL

R. Ganapathy Pillay — Appellant

v/s

.. Palanivelayuthan Pillay — Respondent

Civil Appeal No. 5 of 1984

Mr. B. George for the appellant

Mr. K. Sha... for the respondent

Judgment of Souyave J.A.

The appellant is the nephew of the respondent. From September or December 1967 to July 1975 he worked in the respondent's shop at Market Street, Victoria. He sued the respondent in the Supreme Court for the sum of R.79,400 which he alleged the respondent owed him for services rendered and which the respondent allegedly promised to pay him by virtue of a deed signed by the respondent and dated 10th April 197[illegible], Exhibit 6.

In the plaint the appellant claimed from the respondent a further sum of R 10,500 for services rendered at the same shop from January to July 1979. At the trial it was proved that at the time in question, the shop was being run for a partnership bearing the same name as the respondent and that that part of the claim should have been entered against the partnership and not against the respondent as an individual. There is no appeal against the dismissal of that part of the claim.

In this appeal we are only concerned with the claim for R.79,400 based on Exhibit 6.

The defence of the respondent was two-fold :-

(1) He did not sign the document Exhibit 6 although the signature purporting to be his is truly his signature, having signed the document in blank.

(2) Even if the respondent signed Exhibit 6, that deed is of no effect as it was without valuable consideration or reason.

After reviewing the evidence which he had before him the learned Chief Justice who tried the case concluded his judgment [illegible]:-

> "On a balance of probabilities, I find that the plaintiff has not proved his case. I believe that he [illegible] all the wages to which he was entitled and [illegible] therefore dismiss the plaint with costs."

It is against this decision that the appellant appeals under three grounds which are set out in the memorandum of appeal.

There were two issues before the trial court.

(a) Was Exhibit 6 signed in blank and the appellant filled in the document as it stands now without the authority of the respondent?

(b) What effect should be given to Exhibit 6 in view of the defence that it was entered into without valuable consideration or reason?

I shall deal with those issues in turn.

Exhibit 6 although attested by a notary as having been signed before him is a document under private signature. In this case the respondent against whom Exhibit 6 was pleaded did not repudiate his signature in terms of Article 1323 of the Civil Code of Seychelles, hereinafter referred to as "the Code". He acknowledged it as his own signature but said he had signed Exhibit 6 as a blank sheet of paper. What is the position in law in a case such as this?

The following excerpts from Encyclopédie Dalloz, Droit Civil, Verbo Preuve, set out the position very clearly. (2e Edition) paragraphes 674 & 675.

> 674. Une signature peut même être donnée à l'avance. Hormis la signature, le papier reste en blanc jusqu'à ce que l'acte soit rédigé; d'où le terme de blanc-seing. Malgré le danger qu'il comporte pour le signataire, le procédé est admis: une fois le blanc rempli, l'acte fait preuve comme acte sous seing privé. Une double protection des signataires est cependant établie par la loi: l'abus de blanc-seing est pénalement réprimé (C. pén., art. 407): lorsqu'il s'agit d'un engagement unilatéral l'exigence du 'bon pour' limite quelque peu les risques encourus par le signataire.
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> 675. Il reste toujours loisible au signataire d'un blanc-seing de prouver que les mentions inscrites à

l'acte ne correspondent pas à celles qu'il avait voulu accepter. Mais il ne peut, semble-t-il rapporter cette preuve par témoins que s'il produit un commencement de preuve par écrit, car il cherche à prouver contre le contenu d'un acte écrit. En effet, un écrit, même s'il a comporté à l'origine un blanc-seing, fait foi des conventions qu'il contient comme si elles y avaient été inscrites avant la signature, sauf preuve contraire administrée conformément à l'article 1341 du code civil par la partie qui allègue un abus (Civ. 9 nov. 1977, Bull. civ. 1, no 409). Cependant, si le blanc-seing avait été frauduleusement soustrait et rempli à l'insu du signataire, il est admis que la preuve de cette soustraction et de l'abus de blanc-seing puisse être librement rapportée par tous moyens.

(1954 Edition) paragraphe 383

"383. Pourtant, il ne faudrait pas croire que le signataire d'un blanc-seing, quelle que soit son imprudence, ne puisse jamais échapper aux obligations contenues dans un tel acte. En effet, il lui est toujours possible de prouver que les déclarations ou obligations qui y sont énoncées ne sont pas celles qu'il a été dans ses intentions de voir figurer. Mais dans ce cas, la charge de la preuve lui incombe, ce point n'est pas douteux."

To sum up the above authorities. Once a document bears the signature of a person, that person is bound by the document as any document under private signature. If the signatory pleads that the contents of the document do not correspond to what he wanted to adhere to by signing the document, the onus is on him to show that the document was filled in against his wishes. However in some cases Article 1341 of the Code may hamper such proof if there is lack of writing providing initial proof under Article 1347. This did not apply here as no objection was made to oral evidence being led.

In this case it was for the respondent to satisfy the trial court, on a balance of probabilities, that Exhibit 6 was signed as a blank sheet of paper and that it was filled in by the appellant against the wishes of the respondent. On that issue the burden of proof did not rest on the appellant as the learned trial Judge thought, in finding that "the plaintiff has not proved his case".

Is it possible to say that, had the learned trial Judge directed himself properly on that issue, he would necessarily have come to a decision in favour of the respondent?

The evidence on this issue is finely balanced and does not depend solely on the evidence of the parties. There is the evidence of the notary, Mr. Nageon, to be taken into account. The learned trial Judge himself did not make a clear cut finding that Exhibit 6 had been signed as a blank sheet or paper. He only said that on a balance of probabilities the appellant had not proved his case. This points to a decision that it was equally probable than not that Exhibit 6 had been signed as a blank, but that as the burden rested on the appellant, he had not proved his case.

In the circumstances of this case it would not be proper for this court to substitute a finding on that issue to that of the trial court.

However I shall assume that Exhibit 6 was signed by the respondent when the document ~~was~~ had been filled up as it stands now and that he signed it in the presence of the notary, Mr. Nageon. I shall proceed to consider the second point raised as to the effect to be given to Exhibit 6.

Exhibit 6 contains three paragraphs.

In the first paragraph the respondent acknowledges that he owes the appellant remuneration of R.79,400 for his services in his shop in Market Street, Victoria, Seychelles from 1967 to 1978.

In the second paragraph the respondent promises to pay this debt of R.79,400 with interest thereon at normal rates prevailing from time to time to the respondent or his heirs or to his or their order on demand.

In the third paragraph the respondent authorises the appellant or his heirs to proceed against his assets wherever situated should he fail to honour his indebtedness on demand.

Exhibit 6 is a promissory note falling within the definition of subsection (1) of section 89 of the Bills of Exchange Act (Cap. 242), hereinafter referred to as "the Act".

The condition contained in the third paragraph of Exhibit 6 does not affect the promise which is unconditional. That paragraph may be treated as unwritten as it purports to give a right which the appellant or his heirs would have anyway.

It is interesting to note that the requirement of the formula as in paragraph 1 of Article 1326 of the Code which is designed against the abuse of signatures given in blank, as alleged and proved in this case, does not apply to promissory notes by virtue of paragraph 2 of that Article.

On the face of Exhibit 6 the consideration for the promissory note was the remuneration of the appellant for his past services. That would be valuable consideration by virtue of section 27(1)(b) of the Act, being an antecedant debt or liability.

However the respondent has disputed that fact specifically in pleading that there was no valuable consideration or reason for the note. The learned trial Judge made a specific finding to the effect that the appellant had had all the wages to which he was entitled. I am satisfied that there was evidence on which the learned trial Judge could properly and reasonably make such finding.

In the circumstances therefore, what is the effect of Exhibit 6? Can it be said that Exhibit 6 has no effect because there is no valuable consideration or reason.

As I pointed out in the case of Corgat v. Maree 1976 S.L.R 109, 112 & 113, from section 95(1), the title to sections 27 to 30, sections 27(1) and 30(1) of the Act it appears clearly that "consideration" is required to support a promissory note, but the expressions "valuable consideration" or "consideration" in the Act although borrowed from English law must be given an interpretation adapted to and consistent with our own system of law.

Under Article 1108 of the Civil Code of the French as in force before the Code came into operation on the 1st January 1976 there were four essential conditions that were required

to be present to render a contract valid. One such condition was "Une cause licite dans l'obligation". This has now been replaced in Article 1108 of the Code by the condition that the contract should not be against the law or against public policy. There is no doubt that before the Code came into force the expressions "valuable consideration" and "consideration" in the Act corresponded to "cause" in the Civil Code. These expressions now correspond to the expression "reason" in Article 1132 and "object" in Article 1133 of the Code. As I have said in Corgat v Maree, above cited, at page 113 it could be argued from the new provisions of Article 1132 of the Code that there must be a "reason" for making an agreement to render the agreement valid, although such reason need not be stated. However I am not prepared in this case to express a considered opinion as to the state of the law with regard to the lack of valuable consideration or reason in the case of a promissory note. I prefer to rest my decision on some other legal principle which is certain and applies in this case. It is not altogether foreign to the question of lack of consideration.

In this case the promissory note, Exhibit 6, is a unilateral contract whereby the respondent purports to remunerate the appellant for his past services. Under French law such a contract is known as a "donation rémunératoire". I have set out the relevant authorities on the subject in the case of Jacobs & Anor. v. Devoud 1978 SLR 164, 170 & 171 and I need not repeat them here. The same authorities may be found in Juris-Classeur, Civil, Art. 931, Donations entre vifs, paragraphs 277 to 284. The rule which has been evolved by French jurisprudence may be stated as follows.

1. Remuneration by way of donation (donation rémunératoire) is a reward for services rendered to the donor by the donee.

2. Such a "donation" has all the characteristics of a payment and therefore may be attested by a deed under private signature if -

(a) the service rendered has a monetary value; and

(b) the amount of the donation is equivalent to the value of the service rendered.

3. Otherwise the "donation" is a mere gift and as such is subject to the authentic form prescribed by paragraph 1 of Article 931 of the Code under penalty of nullity.

4. Where the amount of the donation far exceeds the value of the service rendered, the deed under private signature attesting the donation is not set aside altogether as invalid, but the amount of the donation is reduced to match the value of the service.

Applying the above principles to this case one is bound to decide that Exhibit 6 is null and of no effect as the learned trial Judge found that the appellant had had all the wages to which he was entitled. In the circumstances therefore the sum of R.79,400 was a gift which the respondent was making to the appellant and such a gift should have been effected by a deed drawn up by a notary in the usual form of a donation and the original thereof kept by him. Moreover such a deed was subject to the formalities prescribed by sections 38 and 39 of the Notaries Act (Cap. 85) and failure to comply with section 29 entails the nullity of the deed.

Moreover Exhibit 6, due to lack of form prescribed by Article 931-1 of the Code offends against the rule of public policy provided for under that Article. Article 1131 of the Code provides that an obligation which is against public policy shall have no legal effect. It follows that Exhibit 6 has no legal effect.

For the above reasons, even if the learned trial Judge had found that Exhibit 6 had been signed by the respondent when that document had been filled in as it stands to-day, he would have been bound to set it aside as null and of no effect.

I would therefore dismiss the appeal with costs.

A. Sauzier

A. Sauzier
Justice of Appeal

IN THE SEYCHELLES COURT OF APPEAL

R. Ganapathy Pillay ... ... Appellant

- v -

P. Palaniveluthan Pillay ... ... Respondent

(Civil Appeal No.5 of 1984.)

Mr. R. Georges for the ~~xxxxxxx~~ appellant
Mr. K. Shah for the respondent.

JUDGMENT OF LAW J.A.

The appellant sued the respondent to recover the sum of R. 79,400 allegedly due to him for services rendered as an employee in the respondent's shop over a period of years. The appellant pleaded in his plaint that he had worked for the respondent " without pay " from 1967 to 1975, and that the respondent acknowledged that he owed the amount claimed by signing a deed in which he promised to pay the debt with interest on demand. The defence was that the appellant was paid for his services in full, in that he drew money from the shop " as and when he needed ", and, as regards the deed, the respondent pleaded as follows -

> " If, which is denied, the defendant signed the alleged deed, the defendant avers that it was without valuable consideration or value."

The background to this case is that the respondent is the appellant's uncle, and comes from the same part of India as the appellant, who arrived in Seychelles from India in 1967 when he was only 12 years old to work in his uncle's business. This was an arrangement arrived at between the appellant's parents, who were poor, and the respondent, a prosperous Hindu merchant. It is not uncommon for young Hindus to be allowed to join the business of a prosperous relative, to live with him as a member of his family, so as to learn how to carry on business and gain experience in trade. Such an arrangement, in its early stages at any rate, could be described as an apprenticeship. As the appellant said, in his evidence in chief, he was not paid a salary, but whenever he needed money for his parents in India, he would approach his uncle who then sent it, about R. 2,000 in all. He was fed by his uncle, and provided with clothes and occasional pocket money. He was told by his uncle that in due course he would be taken on as a ~~xxxxx~~ partner in the business. In

1975

1975 the appellant returned to India, where he took over a business owned there by the respondent consisting of a shop and a plantation. There has been litigation, still unfinished, in an Indian court arising out of this transaction, between the parties.

In 1978, three years after the appellant had left Seychelles and ceased to work for the respondent, the document Ex.6 came into existence. The respondent admits having signed it, but says he did so in blank, and sent it to the appellant at the latter's request for him to complete. This was because his signature was required for various purposes including applications for the transfer of licences. The document has the attributes of a promissory note, in that it contains, in typescript, an unconditional promise to pay to the appellant R. 79,000 on demand " in consideration of his services in my shop in Market Street, Victoria, Seychelles since 1967 to 1975." The document appears to have been signed in the presence of a Seychelles notary public, and bears the latter's signature and seal, and it also bears the signature of a third party as witness. The notary gave very unsatisfactory evidence. He identified his signature, but could not remember if the respondent was present at the time, or if the document was blank or complete. The respondent is definite that he was not present, and that his signature was not attested as it purports to have been. He deponed that the text of the document was not inserted by him or with his authority. In short, the respondent's case is that the document, Ex.6, except for his signature, is a forgery.

In dealing with the vague, contradictory and unsatisfactory evidence adduced by both sides in this case, the learned trial judge (Seaton C.J.) said:-

> " after considering all the evidence and observing the demeanour of the witnesses in the box, I am inclined wherever there is a conflict between the parties' testimonies to accept the evidence of the defendant rather than that of the plaintiff and his witnesses ... "

I can see no reason for departing from the learned Chief Justice's assessment of the reliability of the evidence in this case, based as it is on his observation, particularly as to demeanour. He held as a fact that the appellant had been paid all the wages to which he was entitled, and on a balance of probabilities had not proved his case. As regards the promissory note, or deed, Ex.6, he found it a little difficult to conceive that a very

experienced businessman such as the respondent should sign such a document in blank, but " bearing in mind that the person to whom he gave it was someone of his own blood, whom he had always treated as a son from the age of young boy and I do not find it incredible when viewed in that light. This I read as a finding by the learned Chief Justice that the document ex.6 was in fact signed by the respondent in blank, in view of his xxx finding that, in case of conflict, he preferred the evidence of the witness to that of the xx appellant. From that it follows that the xxx of ex.6 must have been inserted above the respondent's signature by an unauthorised person, and that the respondent is not bound by it.

I would dismiss this appeal, with costs.

Delivered at Victoria this day of ,1985.

(sgd.) (E.J.E.Law.)

IN THE SEYCHELLES COURT OF APPEAL

CIVIL APPEAL NO. 5 OF 1984

B E T W E E N

R. GANARATHY PILLAI . . . . . APPELLANT

A N D

P. PALANIVALAYUTHA PILLAY . . . . . RESPONDENT

JUDGMENT OF MUSTAFA, P.

The appellant was the plaintiff in a Supreme Court action filed by him against the respondent in January 1983. The appellant had claimed Rs 79,400 being balance of wages due to him for the period 1967 to 1975 when he had worked for the respondent; this sum being reflected in a document signed by the respondent acknowledging the debt coupled with a promise to pay, being Exhibit 6 at the trial. The appellant further claimed a sum of Rs 10,500 being unpaid wages from January 1979 to July 1979 at the rate of Rs 1500 per month.

The Supreme Court (Seaton, C.J.) dismissed both the items of claim. The appeal is only against the dismissal of the claim for Rs 79,400.

Briefly the background to the dispute is as follows. The appellant is the nephew of the respondent who was a businessman in Seychelles. The appellant lived in India, and his family was poor. The respondent wanted to help the appellant and brought the appellant out to Seychelles when the appellant was about 12 or 13 years old. He brought up the appellant practically as his own son. He fed and clothed him and gave him work in his shop. It was a typical arrangement in a Hindu joint family when one more fortunate family member helps a less fortunate one.

The appellant lived in the respondent's household, and drew out sums of money as and when required, and various sums so drawn out

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were sent to his family members in India or to his own bank account there. He also used to take out articles of clothing and other goods for his own use. All these items of cash and goods were duly entered in books of account kept in the business. The appellant began as a salesman and graduated to an accounts clerk.

The respondent also had another nephew whom he was keeping in his business, one V. N. Pillay, who testified at the trial as P.W.2.

The books of accounts were written up partly by the appellant, partly by P.W.2, and partly by the respondent.

According to the books of account, the wages for the appellant commenced at Rs 100 per month, and rose to Rs 150 per month in 1969 and went up to Rs 500 per month in 1974.

In 1977 the respondent decided to form a partnership. Both the appellant and P.W.2 testified that the respondent had promised to make P.W.2 and the appellant partners in the partnership with the respondent's son. The respondent denied making such a promise.

The respondent stated that he had difficulty in getting a work permit for the appellant to work in Seychelles as the appellant originally came out on a dependant's pass. The immigration officer suggested that the respondent could have an adsistant but that it would be necessary to have some sort of partnership formed for that purpose. However, the appellant, not being a resident of Seychelles, could not be taken on as a partner. The respondent took on P.W.2 as a partner in the partnership. At that time the appellant was in India, and when the appellant came to know of this he reacted strongly to his failure to become a partner. He allegedly wrote several letters to the respondent in late 1977 and early 1978 to the effect that since he was not going to be a partner he should be paid the wages due to him. The respondent denied receiving those letters.

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In 1978 the respondent was in India. He had a business called Palanivel Agencies. He sold the said business to the appellant who paid by a promissory note for Indian Rs 66,000 odd. In order to effect the transfer of the business the respondent testified that he had to sign several letters to various officials and departments in India which he did. On 1st April 1978 when he was in Madrass on his way back to Seychelles the appellant approached him in his hotel and said that he had difficulties with the State Bank of India because the respondent had not signed the relevant document with his full name, but had only initialled it. The respondent thereupon signed three plain papers in blank with his full name in order to facilitate the transfer of Palanivel Agencies. The respondent alleged that the appellant had filled one of those blank papers signed by him with the acknowledgement of debt and promise to pay being Exhibit 6 on which the appellant relied for his claim of Rs 79,400. He denied having ever signed such a document at any time.

The appellant had alleged that the respondent had sent the signed document (Exhibit 6) to him in India. P.W.2 testified that the respondent had the document prepared by a lawyer one Naidu and went to the offices of Mr. de Lestang in Seychelles on 10th April, 1978, and signed it in the presence of Mr. de Lestang. P.W.2 also signed as a witness, a rather unusual step for him to have taken. Mr. de Lestang's evidence was rather inconclusive.

The appellant had produced a list being Exhibit 11 at the trial containing details of his wages due. The account commenced in September 1967 at Rs 900 per month and rising to Rs. 1200 per month in January 1973. It also included an item for bonus at Rs 2000 per year for 9 years. Credit for Rs 33,600 was given for monies received and goods taken. The net balance due to the appellant was shown

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as Rs 79,400. He alleged that he had copied these details from a "personal" account book which was not produced at the trial, and which he alleged was in the sole custody of the respondent. He seemed to suggest that that account book reflected the true state of affairs. P.W.2 also testified to the existence of such an account book. The respondent strenuously denied that such a book existed.

However, the details given by the appellant in Exhibit 11 would seem to indicate that the figures were doctored. The item concerning a yearly bonus of Rs 2000 is clearly incredible. The appellant worked for 3 or 4 months in 1967 and he was then 12 or 13 years old. It is inconceivable that he was entitled to a bonus of Rs 2000 for that year. It would seem that the appellant had tailored the figures in the list Exhibit 11 to arrive at the sum of Rs 79,400.

There was a conflict of evidence between the parties on all important issues. There was a conflict as to what were the wages of the appellant, whether there were wages due, whether the respondent signed the document Exhibit 6 and whether the respondent was liable to pay the appellant Rs 79,400.

The Chief Justice dealt with the evidence adduced carefully and stated:

> "In any event after considering all the evidence and observing the demeanour of the witnesses in the box, I am inclined, whenever there is a conflict between the parties' testimony, to accept the evidence of the defendant rather than of the plaintiff or of his witness Natharajan (P.W.2)."

To my mind, that would amount to the Chief Justice in effect finding that the wages payable were as alleged by the respondent,

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that no arrears of wages were due to the appellant, that the respondent had not signed Exhibit 6 and that the respondent was not liable to pay the appellant $9,400 or any sum.

Mr. George [illegible]ring for the appellant before us, conceded that he had a difficult task in that he was arguing the appeal purely facts. He submitted that the Chief Justice did not appreciate the evidence properly or drew the wrong inferences from the evidence.

The document Exhibit 6 on which the appellant relied for his claim, was stated to be in respect of wages due for the period from 1967 to 1975. From the books of account produced at the trial, the wages due were shown, and from the same books, the appellant had withdrawn money and taken out goods for a sum certainly equal to if not in excess of what he was entitled to. These books were written up partly by the appellant himself. And from the evidence given by D.W.2 the Labour Commissioner, the wages shown on the account books were eminent reasonable. The evidence adduced established that no wages were due to the appellant and that he had been paid in full.

Mr. Georges at one stage seemed to suggest that since the document Exhibit 6 bears the signature of the respondent, and it was in the nature of a promisory note, the onus was on the respondent to show that he was not liable. That is true. But the respondent had testified how he had come to sign three blank papers with his full name in relation to the transfer of the Palanievel Agencies to the appellant. He suggested that the appellant had filled in the details on Exhibit 6 on one of those papers signed in blank by him. In view of the fact that no wages were due to the appellant, the explanation of the respondent was credible, as Exhibit 6 is intimately linked to wages due and should not be dealt with in isolation.

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In this connection the Chief Justice stated:

> "It is [illegible] difficult to conceive that the defendant who [illegible] to be a very experienced businessman, in [illegible] connection with the sale of Palanivel Co. and [illegible] order to assist the plaintiff to have the account transferred in his name and to collect money from customers, would have signed in blank a piece of paper because thereafter anyone could write anything above it and present it as his deed, however, I bear in mind that the person to whom he gave it was someone of his own blood, whom he had always treated as a son from the age of a young boy and I do not find it so incredible when viewed in that light."

From this it seems clear that the Chief Justice believed that Exhibit 6 was filled in after the respondent had signed the paper in blank.

Mr. Shah for the respondent submitted that the appellant had been vacillating in his claim; he had at some stage claimed for a share of profit in the business and at another stage claimed for arrears of wages. He suggested that the claim was bogus and that all wages due to the appellant had been fully paid.

Before us both Mr. Georges and Mr. Shah analysed the evidence adduced at the trial in great detail, but I am satisfied that the Chief Justice appreciated the evidence properly and drew the correct inferences. He heard and saw the witness and weighed the evidence carefully and he came to the conclusion:

> "On a balance of probabilities I find that the Plaintiff has not proved his case. I believe that he had had all wages to which he was entitled ...".

In my view the Chief Justice had come to the right conclusion. He in effect found that the document, Exhibit 6 was not executed by the respondent, and he was thus not liable on it. It was also argued for the respondent that there was no consideration for payment as the consideration was expressly stated to be wages due, and in fact no wages were due. The document Exhibit 6 was not a

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notarial deed and was under private signature. Although "consideration" as such is not mentioned in the Seychelles Civil Code, "consideration" would, I think, be equivalent to "reason" in Article 1[illegible] and Gergat v. Maree, Civil Appeal 9/76 (Seychelles) reported at page [illegible] of the Seychelles Digest. This point also has merit.

In my view the appeal fails, and I would dismiss it with costs.

(A. MUSTAFA)

PRESIDENT