



## CARIBBEAN COURT OF JUSTICE

**134 HENRY STREET  
PORT OF SPAIN  
REPUBLIC OF TRINIDAD AND TOBAGO**  
Telephone: (868) 612-5225 Fax: (868) 624-4710  
Website: [www.ccj.org](http://www.ccj.org)

### **MEDIA RELEASE**

(For immediate release)

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### **CCJ AFFIRMS THAT ISSUES NOT PROPERLY PLEADED ARE NOT PROPERLY BEFORE THE COURT**

**Port of Spain, Trinidad and Tobago.** On Tuesday, 20<sup>th</sup> February 2024, the Caribbean Court of Justice (CCJ) dismissed the appeal in *Wilfred P Elrington v Progresso Heights Limited* (2024) CCJ 4 (AJ) BZ. This appeal was from the Court of Appeal of Belize. This case surrounded a land dispute in Belize between Mr Wilfred P. Elrington SC and the company Progresso Heights Ltd (PHL). Mr Elrington had previously lodged several cautions against lands owned by PHL thereby preventing the company from conducting any business in relation to the lands.

Mr Elrington held 20% of the shares in PHL. The directors of PHL were father and son, Mr Lawrence Schneider and Mr Adam Schneider respectively and they held the remaining 80% of PHL's shares. PHL commenced claims in the Supreme Court against Mr Elrington and the Registrar of Lands seeking removal of the cautions. The claims were heard together, and the trial judge found that the cautions were unlawfully lodged by Mr Elrington and unlawfully accepted by the Registrar of Lands. The trial judge ordered that the cautions be removed and that no further cautions were to be accepted by the Registrar of Lands without the permission of the court.

Mr Elrington appealed the trial judge's decision to the Court of Appeal. The Court of Appeal noted that only one of the grounds of appeal challenged the primary findings of the trial judge. The other grounds of appeal concerned whether the proceedings were properly brought by PHL with the requisite authority. The Court of Appeal held that Mr Elrington had not raised in his pleadings before the trial judge the issue of the legitimacy of the proceedings commenced by PHL. The court held that that issue could not be considered by it. The appeal was therefore dismissed, and the order of the trial judge affirmed.

Mr Elrington appealed to the CCJ. He filed several grounds of appeal against the decision of the trial judge. He sought to argue once more that the trial judge was wrong to find that Mr Lawrence Schneider had both actual and ostensible authority as director and agent of PHL to sell PHL's

lands and to testify on behalf of PHL. He claimed that PHL was not properly a party to these proceedings. Mr Elrington also filed grounds of appeal against the decision of the Court of Appeal.

On the date of hearing of the appeal at the CCJ, Mr Elrington applied to amend his notice of appeal to substitute “trial judge” or “High Court” with “Court of Appeal.” The CCJ dealt with the application to amend in its substantive judgment.

In the lead judgment of the CCJ, authored by Justice Maureen Rajnauth-Lee, two issues were identified. The first issue was whether permission to amend Mr Elrington’s notice of appeal should be granted. Upon examining the scope and objectives of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021, the CCJ was not minded to grant the application. The CCJ stated that to wait until the day of the hearing of the appeal to request to amend the notice of appeal was unacceptable, and unfair to PHL, particularly in the absence of any convincing grounds or reasons. The CCJ underscored that late applications to amend a notice of appeal, or any other late application, particularly made on the day of the hearing, were to be seriously discouraged.

The second issue was whether the Court of Appeal was correct to hold that Mr Elrington could not succeed on his appeal due to his failure to plead that PHL had commenced these proceedings without the requisite authority. The CCJ emphasised the importance and function of pleadings to give fair and proper notice to the opposing party.

The CCJ was of the view that there was no reason to interfere with the decision of the Court of Appeal. Mr Elrington never raised this issue in his defence filed in the High Court. The CCJ also observed that even during the hearing before the trial judge, Mr Elrington did not seek to amend his defence, despite the strong objections of PHL’s counsel during the cross-examination of Mr Lawrence Schneider on that issue.

A concurring opinion authored by Justice Winston Anderson highlighted that although the appeal was filed as of right, it could be struck out if it was an abuse of process or if the issues pleaded were not properly before the Court. Justice Anderson noted that abuse of process was a very high bar that required bad faith and he was not prepared to consider that this appeal had reached that bar.

Emphasizing the importance of pleadings as providing the guardrails of litigation, Justice Anderson found that the application to amend the pleadings was not simply to amend clerical errors but went to the structure and substance of the case and had taken PHL by surprise. He found that six of the nine issues on appeal to the CCJ could not be raised as they had not been properly pleaded in the High Court. The simple solution would have been for Mr Elrington to have made an application to amend the pleadings at the appropriate time before the trial judge. This he had failed to do.

In addition, Justice Anderson reiterated that there was no right of appeal against interlocutory decisions even in civil cases. This appeal could not be sustained as the remaining 3 issues were in essence an appeal from certain interlocutory proceedings before the trial judge for which leave had not been sought or granted. Accordingly, the appeal to the CCJ was not properly before the Court.

Following these judgments, the CCJ dismissed the appeal. The orders of the Court of Appeal were affirmed, and it was ordered that Mr Elrington pay to PHL the costs of this appeal as agreed to by the parties.

The matter was heard by the Honourable President Saunders and Justices Anderson, Rajnauth-Lee, Burgess, and Jamadar. Mr Wilfred P Elrington, SC and Mrs Paulette Elrington-Cyrille acted for the Mr Elrington. Ms. Priscilla J Banner acted for Progresso Heights Limited.

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#### About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica, Saint Lucia and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

For more information please contact:  
The Public Education & Protocol Unit  
Tel: (868) 612-5225 ext. 2260  
Email: [ccjcomm@ccj.org](mailto:ccjcomm@ccj.org)