



## **SUPPLEMENTAL JUDGMENT**

**Charles Villeneuve  
Kyoto Securities Limited**

**v**

**Joel Gaillard  
G Holdings Limited**

**From the Court of Appeal of the Commonwealth of the  
Bahamas**

**before**

**Lord Phillips  
Lord Walker  
Lord Brown  
Lord Collins  
Lord Clarke**

**SUPPLEMENTAL JUDGMENT DELIVERED BY  
Lord Walker  
ON**

**23<sup>rd</sup> February 2011**

**Heard on 20 and 21 October 2010**

*Appellant*

Brian Moree QC  
(Bahamas Bar)  
Ms Margaret Gonsalves-  
Sabola  
(Instructed by Charles  
Russell LLP)

*Respondent*

James Dingemans QC  
  
Monique Gomez  
(Bahamas Bar)  
(Instructed by Anthony  
Gold Solicitors)

## **LORD WALKER :**

1. In para 88 of the Board's judgment delivered on 9 February 2011 it is stated, incorrectly, that the appellants' advisers did not make any response to a written memorandum submitted on behalf of the respondents after the close of oral argument. It is now apparent that a memorandum in reply prepared by Mr Brian Moree QC and Ms Margaret Gonsalves-Sobola was submitted on behalf of the appellants on 29 October 2010. By a very regrettable administrative error, which was in no way the fault of the appellants' advisers, it was not passed to the Board. The Board regret and apologise for this error.

2. The Board have now carefully reconsidered the final part (paras 88-98) of the judgment prepared by Lord Walker in the light of the appellants' submissions. Having done so they wish to correct the error of fact contained (as mentioned above) in para 88. In other respects the Board consider that their advice to Her Majesty should be unaltered.

3. In the Board's view the submissions made in the appellants' memorandum do not lead to any change in the appropriate order, for the following reasons.

### *FAC*

There was no pleaded counterclaim for transfer of the FAC shares. The sum of \$2.5m was awarded, not by way of rescission or specific performance, but as damages for breach of a contractual obligation to purchase the FAC shares.

### *FKI*

There was no pleaded counterclaim for transfer of the FKI shares. The sum of \$1,750,165 was awarded, not by way of rescission, but as damages for breach of duty.

VASCO

There was some duplication in the Court of Appeal's awards (CA judgment, paras 84-87). But the respondents may without a formal cross-appeal rely on other grounds to support the Court of Appeal's total award of \$8,402, 267 (JCPC judgment, para 91). The appellants cannot rely on the 1999 compromise agreement since the Court of Appeal rightly held that they were in repudiatory breach of that agreement (JCPC judgment, para 73). But the Court of Appeal erred in overlooking Mr Perrault's final report dated 18 July 2005, which contained the fullest and most up to date information. The total sum to be awarded in respect of Vasco is \$3,405,330 (JCPC judgment, paras 96 and 97).

QRSM

The award of \$247,771 contained an element of duplication. But the loss (on the latest figures) of \$1,199,172 makes the total exceed the cap on the total award which the respondents accept (JCPC judgment, para 98).

HYPERSECUR

These shares were, on Mr Perrault's evidence, worthless (JCPC judgment, para 71). Para 151 of the counterclaim appears to confirm that. There was no pleaded counterclaim for the transfer of the Hypersecur shares to the appellants.

4. The revised figures are, therefore, in summary:

<i>FAC</i>	2,500,000
<i>FKI</i>	1,750,165
<i>VASCO</i>	3,405,330
<i>QRSM</i>	1,199,172
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	8,854,667
Excess over cap	452,400
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	8,402,267
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