In The Supreme Court of Bermuda

COMMERCIAL JURISDICTION
2018 No: 149

BETWEEN:

ATHENE HOLDING LTD

Plaintiff

And

(1) IMRAN SIDDIQUI
(2) STEPHEN CERNICH
(3) CALDERA HOLDINGS LTD

Defendants

RULING

Dates of Hearing:	Friday 5 March 2021
Date of Ruling:	Thursday 15 April 2021
Counsel for the Plaintiff:	Mr. Kevin Taylor and Mr. Ben McCosker (Walkers Bermuda Limited)
Counsel for the First Defendant:	Mr. Mark Diel and Ms. Katie Tornari (Marshall Diel & Myers Limited)

Construction of Company Bye-Laws / Contra Proferentem Principle
Contractual entitlement to be indemnified for legal costs

RULING of Shade Subair Williams J

Introduction:

1. This a summons application brought by the First Defendant for an Order directing the Plaintiff, Athene Holding Limited ("Athene" / "the Company") to pay the First Defendant's costs and expenses of these proceedings on an indemnity basis in accordance with a provision of the bye-laws of the Company.

2. Having received oral and written submissions from Counsel for both sides, I reserved my decision and stated that I would provide these written reasons.

Background:

3. Athene is a Bermuda exempt company and has been registered on the New York Stock Exchange since December 2016. Together with its consolidated US subsidiaries which are insurance and reinsurance companies, Athene provides retirement service products to fund retirement needs. The background evidence on Athene and its subsidiaries has been outlined in previous judgments of this jurisdiction of Court and from the Court of Appeal.

4. Suffice to say, it has been said that Athene was once a private company owned in its majority by an affiliate of a company known as Apollo Global Management LLC ("Apollo"). Apollo and its affiliates ("the Apollo Group") control 45% of the total voting power of Athene and five out of twelve of Athene's directors are employees or consultants of Apollo, including its Chairman, Chief Executive Officer ("CEO") and Chief Investment Officer.

5. Mr. James Belardi is the CEO of Athene. In 2008 the 1st Defendant, Mr. Imran Siddiqui, was employed in the New York Office of Apollo until his resignation on or about 15 March 2017. In Mr. Siddiqui's eighth affidavit filed in support of his application before this Court he states that during his employment at Apollo he was involved in overseeing Apollo's investment in Athene. His evidence is that he was appointed as an Apollo-nominated director of Athene on

or about 16 July 2009 through to his resignation. He further states in his evidence that he was never an employee of Athene[1].

6. Mr. Siddiqui and the 2nd Defendant, Mr. Stephen Cernich, founded Caldera Holdings Ltd ("Caldera"), the 3rd Defendant in these proceedings. Caldera was also incorporated as a Bermuda exempt company. In *Athene Holding Ltd v Siddiqui et al* [2018] Bda LR 68 Hellman J stated [14] that Mr. Cernich was employed by Athene and its affiliates from 2009 to June 2016 in various positions, including Chief Actuary and Executive Vice President. It was also said by Hellman J [16] that Mr. Cernich entered into a Separation Agreement and General Release ("the Release") dated 21 June 2016 with Athene and one of its indirect subsidiaries, Athene Asset Management LP ("AAM"). AAM has been described as Athene's investment manager. Hellman J noted that the Release referred to Mr. Cernich's grant or purchase of a number of shares in Athene under various share agreements. It was also said that the Release contained an acknowledgment that the Protective Covenants provided in the share agreements were necessary to protect, *inter alia*, Athene's confidential and proprietary information.

7. The Plaintiff now alleges in these proceedings commenced by a Specially Indorsed Writ that the 1st and 2nd Defendants wrongfully took and/or used the Plaintiff's trade secrets and other protected confidential, proprietary and/or other information for the benefit of the 3rd Defendant and for themselves, to the detriment of the Plaintiff. It is suggested on Mr. Siddiqui's evidence that the backstory and motive for these proceedings involves Caldera's pursuit of another insurance company ("Company A") in which Athene was purportedly interested. Mr. Siddiqui deposed that Apollo demanded that he and Caldera 'cease and desist' from pursuing the transaction. However, Caldera persisted in its business discussions with Company A.

8. This is but a glimpse into the background to the current application whereby Mr. Siddiqui claims that as an Apollo-nominated director of Athene, he is entitled to seek coverage of his legal expenses in relation to these proceedings under the provisions of Athene's Bye-laws on indemnities.

[1] In *Athene Holding Ltd v Siddiqui et al* [2018] Bda LR 68 Hellman J stated [11] that Mr. Siddiqui "*was formerly a partner and employee of Apollo*…"

Previous Court Proceedings:

9. These proceedings commenced on 3 May 2018 by Specially Indorsed Writ of Summons ("the Writ"). Since the filing of the Writ there have been various interlocutory applications before the Courts of this jurisdiction and in the Court of Appeal. The 1st Defendant seeks to be indemnified for the expenses already incurred which would include the costs of the applications which have been heard and determined. He further seeks advanced sums in respect of the fees which he will likely accrue for the remainder of these proceedings.

Proceedings before the Hon. Mr. Justice Stephen Hellman

10. By a summons application dated 17 May 2018 heard before Hellman J, the 3rd Defendant was granted leave to enter a conditional appearance but was refused on its strike-out application made on the grounds of case management and *forum non conveniens*. Caldera was unsuccessful in persuading Hellman J that the convenient forum for the trial of these proceedings was the State Court in New York. The refusal of this application was confirmed in Hellman J's 28 June 2018 Ruling ("the Hellman J Ruling").

11. On 20 September 2019 the Court of Appeal refused Caldera's application for leave to appeal against the Hellman J Ruling.

12. The balance of Caldera's summons application for the striking out of the Writ pursuant to RSC Order 18/19 and/or the Court's inherent jurisdiction was adjourned to be heard after the delivery of the Hellman J Ruling on the case management and *forum non conveniens* grounds.

Proceedings before the Hon. Chief Justice Mr. Narinder Hargun

13. By summons dated 29 June 2018, Mr. Siddiqui and Mr. Cernich, applied for orders setting aside the Concurrent Writ issued and an earlier *ex parte* Order dated 17 May 2018 granting leave to the Plaintiff to serve the 1st and 2nd Defendants outside of the jurisdiction. During the same hearings before Hargun CJ, Caldera made an application to strike-out the Writ and the Statement of Claim and further sought leave to appeal against the Hellman J Ruling.

14. In a written Ruling dated 14 January 2019 ("the Hargun CJ Ruling") the Court dismissed all of the applications brought by the Defendants. On appeal to the Court of Appeal, the Hargun CJ Ruling was upheld.

Current Stage of Proceedings

15. Athene recently re-amended its Amended Statement of Claim and pleading have closed. It is also anticipated that this matter will proceed to trial.

Analysis and Decision

16. The 1st Defendant seeks an indemnity for expenses incurred and an advancement of fees to cover the pending stages of these proceedings. As a starting point, Mr. Diel points to section 98(1) of the Companies Act 1981 to illustrate the lawfulness of the indemnity provisions contained in Athene's bye-laws, which Mr. Siddiqui relies on as a former director of Athene. Section 98(1) provides:

Exemption, indemnification and liability of officers, etc.

98 *(1) Subject to subsection (2), a company may in its bye-laws or in any contract or arrangement between the company and any officer, or any person employed by the company as auditor, exempt such officer or person from, or indemnify him in respect of, any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the officer or person may be guilty in relation to the company or any subsidiary thereof.*

(2) Any provision, whether contained in the bye-laws of a company or in any contract or arrangement between the company and any officer, or any person employed by the company as auditor, exempting such officer or person from, or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any fraud or dishonesty of which he may be guilty in relation to the company shall be void:

Provided that—

(a) nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force;

(b) notwithstanding anything in this section, a company may, in pursuance of any such provision as aforesaid indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal in which judgment is given in his favour or in which he is acquitted or when relief is granted to him by the Court under section 281; and

(c) *notwithstanding anything in this section, a company may advance moneys to an officer or auditor for the costs, charges and expenses incurred by the officer or auditor in defending any civil or criminal proceedings against them, on condition that the officer or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against them*."

17. Against this statutory background, Mr. Diel submits that Mr. Siddiqui qualifies for indemnification and advancement of fees under Clause 56 of Athene's Bye-laws. There is no dispute between the parties that Mr. Siddiqui qualifies as a "Covered Person" under Bye-law 56.1 by reason of his appointment as an Apollo-nominated director of Athene. I am more concerned with the task of construing the following wording under Bye-law 56.1:

"[A Covered Person] shall be indemnified and secured harmless by the Company from and against all Liabilities and Expenses arising from any and all threatened, pending or completed Proceedings, in which any Covered Person may be involved, or is threatened to be involved, as a party or otherwise by reason of …its status as a Covered Person…. … provided, however, that a Covered Person shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Covered Person is seeking indemnification pursuant to this

Bye-law 56, the Covered Person acted fraudulently and/or dishonestly in relation to the Company…"

18. Bye-law 56.2:

"*To the fullest extent permitted by Applicable Law, Expenses incurred by a Covered Person in appearing at, participating in or defending any indemnifiable Proceeding pursuant to this Bye-law 56 shall, from time to time, be advanced by the Company prior to a final and non-appealable disposition of the Proceeding in which it is determined that the Covered Person is not entitled to be indemnified upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it ultimately shall be determined that the Covered Person is not entitled to be indemnified pursuant to this Bye-law 56…*"

19. Arguments as to costs of the appeals arising out of the Hellman J Ruling and the Hargun CJ Ruling were heard in the Court of Appeal. In the Court's Costs Ruling of 2 March 2020, Clarke P explained, by construction of Bye-law 56.9, why Athene's Eighth Amended and Restated Bye-Laws ("the Eighth Bye-laws") were applicable to Mr. Cernich and to Mr. Siddiqui on 30 June 2016. The Court then considered Athene's Ninth Amended and Restated Bye-Laws ("the Ninth Bye-laws"). These are the Bye-laws with which I am currently concerned and which the Court of Appeal found to be applicable on 20 March 2017 when Mr. Siddiqui's resignation from Athene became effective.

20. Notably, it was common ground between the parties at the hearings before the Court of Appeal in June 2019 that there had been no judgment in existence fitting the description referred to in either provsion of Bye-law 56. That said, the Court of Appeal observed that this Court will need to determine whether Mr. Siddiqui qualifies under Bye-law 56 before any order can be made for payment in satisfaction of any costs order made against him. Clarke P said [41-43]:

"*41. What will need to be determined before any order is made for payment by any of the Appellants is whether or not the Appellant in question is entitled to an indemnity under either of the Bye-Laws or, in the case of Mr Cernich, the Separation Agreement,*

42. That appears to us to involve determination of the following questions in relation to the Appellants:

(i.) In relation to Mr Siddiqui, whether or not a final and non-appealable judgment has been made against him which determines that he has acted fraudulently and/or in bad faith, or engaged in wilful misconduct, or (if this be a stricter test) whether he has acted fraudulently or dishonestly in relation to Athene [Footnote 7*: A matter which cannot be determined until such a judgment has been entered*]*;*

…

43. Since we have not had full submissions from Athene as to the scope of the indemnities in the Bye-Laws, these questions should not be regarded as necessarily definitive or comprehensive. There may be others that arise."

21. It is no longer common ground between the parties that there are no judgments in existence which would exclude Mr. Siddiqui from the protection of the indemnity provision at Bye-law 56. Asserting Mr. Siddiqui's exclusion, Mr. Taylor now points to a final arbitration award made in respect of an arbitration hearing between Apollo, Mr. Siddiqui and others which was delivered months prior to the June 2019 hearings in the Court of Appeal.

22. However, Mr. Diel argued that on the proper construction of Bye-Law 56.1, I need only concern myself with whether there has been a final and non-appealable judgment entered against Mr. Siddiqui in these particular Court proceedings. Mr. Diel explained that his client's application for coverage was for an indemnity to cover these proceedings and not the JAMS arbitration or any other proceedings. He submitted that the Court ought to construe Bye-law 56.1 as enabling him to seek an indemnity in any proceeding involving Mr. Siddiqui, so long as no final and non-appealable judgment containing findings of fraud or dishonesty had been made in the same proceedings for which he seeks an indemnity.

23. In making this submission, Mr. Diel said that the Court ought to construe the following wording from Bye-law 56.1 in Mr. Siddiqui's favour: "*[A Covered Person] shall be*

indemnified … from any and all … Proceedings, in which any Covered Person may be involved … … provided, however, that a Covered Person shall not be indemnified and held harmless if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which the Covered Person is seeking indemnification pursuant to this Bye-law 56, the Covered Person acted fraudulently and/or dishonestly in relation to the Company"

24. On Mr. Diel's argument, the underlined word "matter" would narrowly refer to the Court matter i.e. the same Court proceedings in relation to which the indemnity is sought. Mr. Taylor, however, would say that the word "matter" should be more broadly construed as "subject-matter". These two possibilities create an ambiguity in the wording of Bye-law 56.1 and give rise to the doctrine of *contra proferentem*.

25. In *Kuczkiewicz v HG (Bermuda) Ltd* [2018] Bda LR 26[2] I considered the general principles of judicial interpretation of company bye-laws [26-28]:

"*26. In scrutinizing the principles of construction for company bye-laws, the Court considered Lord Neuberger's summary of the general principles on contractual construction in Arnold v Britton [2016] 1 ALL ER 1 p. 5-6. These were the same general contract principles correctly relied on by Hellman J in Kingate Global. However, in Capital Partners Securities, at paragraph 44, the learned Chief Justice observed the rule which uniquely applies to the construction of company bye-laws:*

"*44. These judicial observations clearly undermine the proposition that CPS, qua shareholder, should be bound by a distinctive interpretation of the Fund's Bye-Laws based on its own peculiar knowledge, acquired in its capacity as prospective Placement Agent, of the negotiating process. Or, to put it another way, it is difficult to see why the prohibition on the use of extrinsic evidence relating to the circumstances in which bye-law are adopted should not only apply in the present case where the extrinsic evidence is being relied upon to crucially determine the extent of Participating Shareholders' rights. While the Fund's counsel conceded this principle in his written and oral submissions, this position was somewhat obscured in the course of the hearing because of the enthusiastic emphasis which Mr. Atherton QC placed in oral argument on the drafting history of the Bye-Laws. Having reserved judgment, however, my own researches confirmed that the special legal status of bye-laws meant that the sort of*

[2] This case was upheld on appeal in *Kuczkiewicz v HG (Bermuda) Ltd* [2018] Bda LR 26

extrinsic evidence about negotiating history, upon which the Fund apparently relied in the present case and which was clearly available for the construction of ordinary contracts, was not admissible for construing company bye-laws at all."

27. Citing HSBC Bank Middle East and others-v-Paul Clarke (as liquidator of the Oracle Fund Limited) and others [2006] UKPC 31 the learned Chief Justice recalled that the Judicial Committee of the Privy Council considered it uncontroversial that extrinsic evidence is, as a matter of general principle, inadmissible when construing company bye-laws. (Also see McKillen v Misland Cyprus Investments Ltd [2011] EWHC 3466.)

The Contra Proferentem Principle

28. The Plaintiff also relies on the contra proferentem principle on the basis that the bye-laws belong to the Company. Chitty on Contracts[3] Volume I General Principles Para 15-012:

"This principle of construction embraces two differing, but closely related principles…First, since the party seeking to rely upon an exemption clause bears the burden of proving that the case falls within its provisions, …any doubt or ambiguity will be resolved against him and in favour of the other party…Secondly, as in the case of any other written document, …in situations of ambiguity the words of the document are to be construed more strongly against the party who made the document and who now seeks to rely on them…"

26. In this case, as Bye-law 56.1 is ambiguous, I am bound to apply the *contra proferentem* principle in favour of Mr. Siddiqui as opposed to the Company to whom the bye-laws belong. This means that I should prefer Mr. Diel's submission that the meaning of the word "matter" in Bye-law 56.1 refers to the Court-matter in relation to which the indemnity is sought. In doing so, I find that I need not be concerned with whether there has been a final and non-appealable judgment in other proceedings containing findings of fraud and or dishonesty against Mr. Siddiqui, even if it is in relation to the same or a factually similar subject-matter.

27. I am only concerned with whether there has been such a final judgment in these proceedings. There has not. This is reinforced by the instructive remarks made by Clarke P in the Costs Ruling of Court of Appeal [31]:

[3] Thirty-Second Edition

"31. *It is not, however, at all clear that the Appellants are, or will remain, entitled to an indemnity. In the case of Mr. Cernich and Caldera they may not be entitled to an indemnity at all (regardless of whether the requisite judgment is given). In the case of all three Appellants any claim to indemnity may be excluded by the delivery of the requisite judgment; particularly given the fact that in the Hargun Ruling the Chief Justice found it to be strongly arguable that the pleaded conduct of the Appellants was dishonest*."

28. To my mind, this draws the matter to an end, subject to any possible subsequent finding in these proceedings which qualifies as a final and non-appealable judgment that Mr. Siddiqui acted fraudulently or dishonestly in relation to the Company. However, at this stage, Mr. Siddiqui is entitled to exercise the rights provided to a Covered Person under Bye-law 56. This is so whether or not the Plaintiff is successful in persuading me that its pleadings amount to allegations of fraudulent or dishonest conduct.

29. Notwithstanding, I shall, for the sake of completion, go on to consider the position as to whether there has been a final and non-appealable judgment containing findings of fraud and or dishonesty, external to these proceedings.

Final Award made after the Merits Hearing of the Consolidated JAMS Arbitrations

30. It is explained on Mr. Siddiqui's evidence that Apollo began a JAMS Arbitration against him on 3 May 2018. He said that on 28 November 2018 a further and separate arbitration was commenced by Apollo. The parties served in the latter JAMS Arbitration were Mr. Siddiqui, Caldera and a former employee of Apollo named Mr. Ming Dang. Athene was never party to either of the JAMS arbitrations, which were consolidated for the purpose of a merits hearing.
31. In his affidavit evidence, Mr. Siddiqui characterized the allegations against him and Caldera as follows [9]:

"…*In this separate arbitration, Apollo principally alleged that Mr. Dang - a former Apollo employee who was never an employee, officer or director of Athene- breached duties and obligations owed to Apollo. Apollo only asserted two claims against Caldera and me in this separate arbitration; namely a claim for tortious interference with Apollo's contractual relations with Mr. Dang and a claim for aiding and abetting Mr. Dang's alleged breaches of*

fiduciary duties owed to Apollo. This separate arbitration was consolidated with the JAMS Arbitration for purposes of the merits hearing."

32. In the opening paragraph of the Final Arbitration Award dated 26 April 2019 ("the Final Award") it is said:

"*This arbitration was commenced on May 3, 2018 by Claimants Apollo Global Management, LLC, Apollo Management, L.P… … (collectively "Apollo") against Imran Siddiqui ("Siddiqui"). According to the Statement of Claim, Siddiqui engaged in wrongful use and disclosure of Apollo's "Confidential Information" in violation of the Settlement Agreement and Mutual Release ("the Settlement Agreement") entered into with Apollo on February 21, 2018. The Settlement Agreement resolved an earlier JAMS arbitration for alleged breach of post-employment restrictive covenants filed by Apollo against Siddiqui, a former principal and senior partner of certain Apollo entities*."

33. The Arbitrator, Mr. Mark E. Segall, ("the Arbitrator" / "Mr. Segall") then summarizes his factual findings under part B [6]:

"*The following is a statement of those facts found by the Arbitrator to be true and necessary to the Award. To the extent that this reaction differs from any party's position, that is the result of determinations as to credibility, relevance, burden of proof, and the weight of the evidence, both oral and written. In this case, there are serious credibility issues with respect to both Dang and Siddiqui*…"

34. The Arbitrator explained his dismissal of Apollo's breach of contract claims which alleged that Mr. Siddiqui used its Confidential Information. Where the Arbitrator found Mr. Siddiqui was in breach of its contractual obligations to Apollo, he said:

"*Apollo asserts four breach of contract claims against Siddiqui. Three of these claims have merit. One does not.*

The first two claims that have merit have to do with Siddiqui's obligations with respect to Apollo documents. The Settlement Agreement required Siddiqui to return or destroy within five days of the Effective Date "all Apollo property, including without limitation, any Apollo documents or other Confidential Information…in Mr. Siddiqui's possession or under his control that is in electronic, written, or other tangible form". During discovery in this arbitration Siddiqui produced countless documents that fit squarely within this definition, and he admitted that he did not conduct any electronic searches of his devices that would ferret this out. This breach could not be any clearer.

As an enforcement tool, the Settlement Agreement required Siddiqui to execute an attestation "verifying that he has returned or destroyed all Apollo property and/or Confidential Information in his possession, custody or control." Although Siddiqui submitted such an attestation, "under oath and penalty of perjury," that attestation was false. There is no legitimate excuse for this blatant failure.

Siddiqui tried in his testimony to defend his conduct on this subject by pointing to a provision in the Settlement Agreement that states that if at some future date he came across Apollo Confidential Information he was to return it or destroy it within five business days. This provision may have been designed to cover the inadvertent failure to return or destroy everything in the immediate aftermath of signing the Settlement Agreement, but it does not excuse the wholesale failure to do what was required in the first place.

The third claim relates to Siddiqui's breach of the Settlement Agreement in soliciting Dang to work on Caldera matters. In Section 7(c) of the Settlement Agreement, he agreed not to directly or indirectly "solicit or induce" any officer or employee of Apollo to leave or sever his employment with Apollo until June 18, 2018. The undisputed evidence of Siddiqui's frequent interactions with Dang, Dang's input into Caldera work product, and Dang's surreptitious accessing of Apollo files relating to the Athene bid for AEL are evidence that he was attempting to do just that and continued to do that subsequent to February 21, 2018…"

35. Mr. Taylor invited this Court to construe the below passage from the Final Award [14] as a finding of fraudulent and/or dishonest conduct. This relates to Apollo's claim against Mr. Dang for aiding and abetting Mr. Siddiqui's breach of fiduciary duty:

"*Siddiqui had fiduciary duties at Apollo throughout 2016 and at least until he tendered his resignation in March of 2017. During that time period, Siddiqui did far more than legitimate planning for his next professional venture. There is considerable evidence that in that time frame, he collected and transmitted Apollo's and Athene's Confidential Information, that he solicited investors in an attempt to persuade them to invest in Caldera rather than Apollo or Athene, that he competed with Apollo and Athene for acquisition targets, and that he remained on Athene Board of Directors for the purpose of protecting his own personal interests*."

36. Mr. Belardi, in his fourth affidavit, described these findings of the Arbitrator as acts of dishonesty on the part of Mr. Siddiqui in relation to his dealings with Athene.

37. In assessing Mr. Dang's contractual liability, the Arbitrator rejected Apollo's allegations that Mr. Siddiqui and Caldera tortiously interfered with the contracts between Mr. Dang and Apollo. Further, for the purpose of Apollo's damages claim arising out of allegations that Mr. Siddiqui and Caldera used its Confidential Information in the bid for Company A, the Arbitrator found that there was no evidence that Apollo suffered any damages from its failure to acquire Company A.

38. Turning to the question of punitive damages, the Arbitrator ordered Mr. Dang to pay $1,000,000 in addition to the imposition of other obligations. In relation to Mr. Siddiqui, Mr. Segall held:

"*On the other hand, it is appropriate to impose punitive damages against Siddiqui who continued to involve Dang after the Settlement Agreement was signed and while he was still an Apollo employee. It is reasonable to impose punitive damages against him in the amount of $150,000, which approximates the amount that Apollo paid Dang after the signing of the Settlement Agreement. Apollo argues that additional punitive damages should be assessed in*

the form of requiring the forfeiture of all Siddiqui's carried interests in Apollo funds. This would amount to a penalty approximating an additional $15,000,000. This is far too draconian a remedy in light of the conduct that transpired subsequent to February 21, 2018. Given that Siddiqui bears principal responsibility for this, he rather than Caldera as the corporate entity, should be responsible for this award. Siddiqui shall pay punitive damages of $150,000. No punitive damages award is assessed against Caldera."

39. Although, I have found that Bye-law 56.1 is to be construed in a way which renders this assessment of the Final Award irrelevant, I will nevertheless consider Mr. Taylor's contention that the Final Award qualifies as a final and non-appealable judgment containing findings of fraud or dishonesty against Mr. Siddiqui.

40. It appears that neither "fraud" nor "dishonesty" was expressly pleaded by Apollo in its pleadings in the JAMS Arbitration. More notably, the Arbitrator did not employ either of these terms in his findings against Siddiqui in the Final Award. However, Mr. Taylor submits that I may properly deduce from these factual findings that the Arbitrator concluded that Mr. Siddiqui acted fraudulently and/or dishonestly.

41. In assessing the merits of this submission, I have been asked by the Plaintiff's Counsel to consider the approach of the UK Supreme Court in *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67 where the Court was concerned with whether the word "cheat" connoted a dishonest state of mind. In that case the claimant, a professional gambler, attended the defendant's casino and won £7,700,000.00 in a luck-based card game known as Punto Banco Baccarat. However, the defendant refused to pay the claimant's winnings on the basis of its assertion that the claimant cheated. The disputed validity of the claimant's victory arose out of the claimant's use of a card-reading method referred to as "edge-sorting" whereby the claimant was able to exploit the design irregularities on the backs of the playing cards by asking the croupier to rotate the cards. The claimant admitted to using the edge-sorting method but denied that edge-sorting was a form of cheating.

42. It was common ground between the parties that there was an implied term in their contractual agreement that the claimant would not cheat. The casino further pleaded that the claimant had committed a criminal offence of "cheating" under section 42 of the Gambling Act 2005.

43. At first instance, Mitting J dismissed the claim on the grounds that the implied contractual term had been breached rendering it unnecessary to consider whether the statutory offence had been committed. This decision was upheld by a majority decision of the Court of Appeal where Arden and Tomlinson LJJ agreed that the edge-sorting method had amounted to cheating under the implied contractual terms. Sharp LJ dissented on the view that cheating could only be established in accordance with the statutory provisions which contained the element of dishonesty as defined in *R v Ghosh* [1982] QB 1053.

44. On further appeal, the Supreme Court held [50] that "*the judge's conclusion, that Mr. Ivey's actions amount to cheating, is unassailable. It is an essential element of Punto Banco that the game is one of pure chance, with cards delivered entirely at random and unknowable by the punters or the house. What Mr. Ivey did was to stage a carefully planned and executed sting*…"

45. Delivering the judgment of the Supreme Court, Lord Hughes JSC (with whom Baroness Hale of Richmond PSC, Lord Kerr of Tonaghmore JSC, Lord Neuberger of Abbotsbury and Lord Thomas of Cwmgiedd agreed) said [38] [45] [48] and [51]:

"*38. …However, there is no reason to doubt that cheating carries the same meaning when considering an implied term not to cheat and when applying section 42 of the Act. There will be difference in standard of proof as between civil and criminal proceedings, but that does not affect the meaning of cheating. Section 42 expressly does not exhaustively define cheating, and the elaboration in section 42(3) is explanatory rather than definitive. The section leaves open what is and what is not cheating, as is inevitable given the extraordinary range of activities to which the concept may apply. Plainly, what is cheating in one form of game may be legitimate competition in another.*

…

45. Although the great majority of cheating will involve something which the ordinary person (or juror) would describe as dishonest, this is not invariably so. When, as it

often will, the cheating involves deception of the other party, it will usually be easy to describe what was done as dishonest. It is, however, perfectly clear that in ordinary language cheating need not involve deception, and section 42(3) recognises this. Section 42(3) does not exhaustively define cheating, but it puts beyond doubt that both deception and interference with the game may amount to it. The runner who trips up one of his opponents is unquestionably cheating, but it is doubtful that such misbehaviour would ordinarily attract the epithet "dishonest". The stable lad who starves the favourite of water for a day and then gives him two buckets of water to drink just before the race, so that he is much slower than normal, is also cheating, but there is no deception unless one manufactures an altogether artificial representation to the world at large that the horse has been prepared to run at his fastest, and by themselves it is by no means clear that these actions would be termed dishonesty. Similar questions could no doubt be asked about the taking of performance-enhancing drugs, about the overt application of a magnet to a fruit machine, deliberate time wasting in many forms of game, or about upsetting the card table to force a re-deal when loss seems unavoidable, never mind sneaking a look at one's opponent's cards.

...

48. Where it applies as an element of a criminal charge, dishonesty is by no means a defined concept. On the contrary, like the elephant, it is characterised more by recognition when encountered than by definition. Dishonesty is not a matter of law, but a jury question of fact and standards. Except to the limited extent that section 2 of the Theft Act 1968 requires otherwise, judges do not, and must not, attempt to define it: R v Feely [1973] QB 530. In this it differs strikingly from the expression "fraudulently", which it largely replaced, for the judge did define whether a state of mind, once ascertained as a matter of fact, was or was not fraudulent: R v Williams [1953] 1 QB 660. Accordingly, dishonesty cannot be regarded as a concept which would bring to the assessment of behaviour a clarity or certainty which would be lacking if the jury were left to say whether the behaviour under examination amounted to cheating or did not. The issue whether what was done amounts to cheating, given the nature and rules of the game concerned, is likewise itself a jury question. The judge in the present case applied himself to the question whether there was cheating in exactly this jury manner. He directed himself that it is ultimately for the court

to decide whether conduct amounted to cheating and that the standard is objective. In so directing himself he was right.

…

51. Although the judge did not think it necessary to make a finding on the topic, and it is unnecessary to the resolution of this appeal, it would also seem that the facts which he found amounted in any event to a deception of the croupier. Certainly, the judge found [2015] LLR 98, para 40, that pretending to be superstitious did not by itself cross the line from legitimate play to cheating, comparing it to the skilled poker player who pretends to be a fool. He also found, contrary to one of Crockfords' submissions, that what occurred did not amount to such deception as altogether to negate the existence of any contract for the game. But that was not a finding that there was no deception at all, and on the facts found there clearly was deception of the croupier into doing something which appeared innocuous or irrelevant, but was in fact highly significant and enabled Mr Ivey to win when he should not have done. If, therefore, there were indeed (and contrary to the conclusion reached above) a necessary legal element of dishonesty in cheating, such a deception would be prima facie dishonest, unless it is prevented from being so by necessity to satisfy the second leg of the test in R v Ghosh".

46. In *Ghosh v. General Medical Council (Professional Conduct Committee of the GMC*) [2001] UKPC 29 Dr. Ghosh was a locum surgeon who had claimed payment for operations which she either had not performed or which were expensed under the National Health scheme. In my previous judgment in <u>*Asad Qamar v Bermuda Medical Council*</u> [2021] SC (Bda) 9 App (2 February 2021) I summarized a portion of the facts of *Ghosh v General Medical Council* as follows [66]:

"*Mrs. Dill-Francois directed me to the Privy Council's decision in <u>Ghosh v The General Medical Council</u> [2001] UKPC 29 where the Judicial Board was concerned with an appeal from the decision of the General Medical Council to erase Dr. Ghosh's name from the Register. The appeal was heard pursuant to section 40(4) of the UK Medical Act 1983 which, at the time, provided for appealable decisions to proceed directly to Her Majesty in Council...*

At [94] I added: "…*in the Ghosh case one of the two infractions reported against Dr. Ghosh involved the inaccurate completion of a cremation form. The factual example provided by the Board, which one may reasonably assume to be among the more substantial examples of the inaccuracies on the form, was that Dr. Ghosh falsely stated that she was the ordinary medical attendant of the deceased when she was in fact employed as a locum for Dr. Subramanian. In this respect, the Professional Conduct Committee of the General Medical Council found that she did not take sufficient care in filling in the deceased patient's cremation form*."

47. While the factual background in *Ghosh v General Medical Council* has no real bearing on how the legal principles on "dishonesty" apply to this case, I should note that the professional misconduct reported against Dr. Ghosh extended beyond what is stated above. In *Ivey v Genting Casinos* the UK Supreme Court extensively reviewed the double prong dishonesty test in *R v Ghosh*. Lord Hughes JSC laid out the R v *Ghosh* test as follows [54]:

"54. *A significant refinement to the test for dishonesty was introduced by R v Ghosh[1982] QB1053. Since then, in criminal cases, the judge has been required to direct the jury, if the point arises, to apply a two-stage test. Firstly, it must ask whether in its judgment the conduct complained of was dishonest by the lay objective standards of ordinary reasonable and honest people. If the answer is no, that disposes of the case in favour of the defendant. But if the answer is yes, it must ask, secondly, whether the defendant must have realised that ordinary honest people would so regard his behaviour, and he is to be convicted only if the answer to that second question is yes*."

48. The Court in *Ghosh* [1064] also held:

"In most cases, where the actions are obviously dishonest by ordinary standards, there will be no doubt about it. It will be obvious that the defendant himself knew that he was acting dishonestly. It is dishonest for a defendant to act in a way which he knows ordinary people consider to be dishonest, even if he asserts or genuinely believes that he is morally justified in acting as he did. For example, Robin Hood or those ardent anti-vivisectionists who remove animals from vivisection laboratories are acting dishonestly, even though

they may consider themselves to be morally justified in doing what they do, because they know that ordinary people would consider these actions to be dishonest."

49. Rejecting this particular passage from *R v Ghosh* Lord Hughes JSC explained [59]:

"59. Even if this were correct, it would still mean that the defendant who thinks that stealing from a bookmaker is not dishonest (as in R v Gilks[1972] 1 WLR 1341 -see para73 below) is entitled to be acquitted. It is no answer to say that he will be convicted if he realised that ordinary honest people would think that stealing from a bookmaker is dishonest, for by definition he does not realise this. Moreover, the court's proposition was not correct, because it is not in the least unusual for the accused not to share the standards which ordinary honest people set for society as a whole. The acquisitive offender may, it is true, be the cheerful character who frankly acknowledges that he is a crook, but very often he is not, but, rather, justifies his behaviour to himself. Just as convincing himself is frequently the stock in trade of the confidence trickster, so the capacity of all of us to persuade ourselves that what we do is excusable knows few bounds. It cannot by any means be assumed that the appropriators of animals from laboratories, to whom the court referred in in R v Ghosh [1982] QB 1053, 1064, know that ordinary people would consider their actions to be dishonest; it is just as likely that they are so convinced, however perversely, of the justification for what they do that they persuade themselves that no one could call it dishonest. There is no reason why the law should excuse those who make a mistake about what contemporary standards of honesty are, whether in the context of insurance claims, high finance, market manipulation or tax evasion. The law does not, in principle, excuse those whose standards are criminal by the benchmarks set by society, nor ought it to do so. On the contrary, it is an important, even crucial, function of the criminal law to determine what is criminal and what is not; its purpose is to set the standards of behaviour which are acceptable. As it was put in Smith's Law of Theft 9th ed (2007), para 2.296:

"...the second limb allows the accused to escape liability where he has made a mistake of fact as to the contemporary standards of honesty. But why should that be an excuse?"

50. Recognizing the thirty-year-plus reign of the *Ghosh* test, the UK Supreme Court in *Ivey v Genting Casinos* reasoned that the second limb of the *Ghosh* test was no longer sustainable. Lord Hughes JSC concluded the judgment of the Court as follows [74-76]:

"*These several considerations provide convincing grounds for holding that the second leg of the test propounded in in R vGhosh [1982] QB 1053 does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhdv Tan [1995] 2 AC 378 and by Lord Hoffmann in Barlow Clowes International Ltd v Eurotrust International Ltd [2006] 1 WLR 1476, para 10: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*

75.Therefore in the present case, if, contrary to the conclusions arrived at above, there were in cheating at gambling an additional legal element of dishonesty, it would be satisfied by the application of the test as set out above. The judge did not get to the question of dishonesty and did not need to do so. But it is a fallacy to suggest that his finding that Mr Ivey was truthful when he said that he did not regard what he did as cheating amounted to a finding that his behaviour was honest. It was not. It was a finding that he was, in that respect, truthful. Truthfulness is indeed one characteristic of honesty, and untruthfulness is often a powerful indicator of dishonesty, but a dishonest person may sometimes be truthful about his dishonest opinions, as indeed was the defendant in R v Gilks [1972] 1 WLR 1341. For the same reasons which show that Mr Ivey's conduct was, contrary to his own opinion, cheating, the better view would be, if the question arose, that his conduct was, contrary to his own opinion, also dishonest.

76. For these several reasons, this appeal must be dismissed."

51. While paying close attention to the criminal law context, the UK Supreme Court was clear in stating that these principles equally applied to civil cases [62-63]:

"*62. Dishonesty is by no means confined to the criminal law. Civil actions may also frequently raise the question whetheran action was honest or dishonest. The liability of an accessory to a breach of trust is, for example, not strict, as the liability of the trustee is, but (absent an exoneration clause) is fault-based. Negligence is not sufficient. Nothing less than dishonest assistance will suffice. Successive cases at the highest level have decided that the test of dishonesty is objective. After some hesitation in Twinsectra Ltd v Yardley [2002] 2 AC 164, the law is settled on the objective test set out by Lord Nicholls of Birkenhead in Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378: see Barlow Clowes International Ltd v Eurotrust International Ltd [2006] 1 WLR 1476, Abou-Rahmah v Abacha [2007] Bus LR 220 and Starglade Properties Ltd v Nash [2011] Lloyd's Rep FC 102.The test now clearly established was explained thus in the Barlow Clowes case [2006] 1 WLR 1476 para 10 by Lord Hoffmann, who had been a party also to the Twinsectra case:*

> *"Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree."*

63.Although the House of Lords and Privy Council were careful in these cases to confine their decisions to civil cases, there can be no logical or principled basis for the meaning of dishonesty (as distinct from the standards of proof by which it must be established) to differ according to whether it arises in a civil action or a criminal prosecution. Dishonesty is a simple, if occasionally imprecise, English word. It would be an affront to the law if its meaning differed according to the kind of proceedings in which it arose. It is easy enough to

envisage cases where precisely the same behaviour, by the same person, falls to be examined in both kinds of proceeding…"

52. Neither party distinguished between a 'dishonest' act and a 'fraudulent' act. So, I will proceed on the basis that dishonesty and fraud, in the context of this application, are sufficiently one and of the same. The question I am invited by Mr. Taylor to consider is whether the Arbitrator found that Mr. Siddiqui acted dishonestly or fraudulently in relation to the Company, notwithstanding that he did not expressly employ either of those terms. In considering this question, I am asked to apply the objective test to the legal concept of dishonesty. This means I would ask myself whether Mr. Siddiqui's mental state (in respect of the Arbitrator's findings) would, by ordinary standards, be characterised as dishonest.

53. The Arbitrator found that Mr. Siddiqui breached the Settlement Agreement by failing to return or destroy Apollo's documents and Confidential Information within the specified period. The Arbitrator described these breaches as a "wholesale failure". On my assessment of the Final Award, there is no indication that the Arbitrator considered these contractual breaches to be dishonest or fraudulent conduct. More so, I find that these breaches are not of the nature where it can be said that they could have only been committed dishonestly or fraudulently. It is open to me to find, by applying the ordinary standards measure to the findings made under the Final Award, that such contractual breaches could have been committed by Mr. Siddiqui without a dishonest mind.

54. I now turn to Mr. Siddiqui's false attestation that he had discharged his contractual obligations in relation to returning or destroying Apollo's documents and Confidential Information. Here, the Arbitrator expressly found that this amounted to a "blatant failure". Putting it mildly, it would be speculative of me to deduce from the Final Award, which does not particularize the evidence of the false attestation in any significant detail, that the false attestation was made dishonestly. I can only proceed on the basis that if the Arbitrator found this conduct to be dishonest, he would have said so. On my reading of the Final Award, the Arbitrator described the false attestation in terms which give rise to negligence rather than dishonesty. For example, Mr. Segall described this as a "wholesale failure". I am bound to accept that the Arbitrator

found this act of false attestation exactly as he said he found it. On that same analysis, I have no basis for finding that the Arbitrator considered Mr. Siddiqui to be acting dishonestly or fraudulently when Mr. Siddiqui solicited or induced Mr. Dang to leave or sever his employment with Apollo.

55. For all of these reasons, I reject the Plaintiff's contention that the Arbitrator made findings of fraud and dishonesty against Mr. Siddiqui.

56. I shall further consider whether the Final Award qualifies, for the purpose of Bye-Law 56, as a final and non-appealable judgment entered by a Court of competent jurisdiction.

57. The finality of the Final Award is disputed between the parties. Mr. Siddiqui said in his evidence [14]: "*I also understand that there has been no final judgment entered by the Supreme Court of the State of New York in relation to the Arbitration Award*." Mr Belardi, on the other hand, described this statement as "*technically correct*" but "*misleading*". He deposed [10-16]:

"*10. On 6 May 2019, various Apollo entities filed in the Supreme Court of the State of New York a verified petition to confirm the JAMS arbitration award (the "Verified Petition").*

11. On 22 May 2019, Siddiqui (together with the Third Defendant) filed an affirmation in support of the Verified Petition. Thus, Siddiqui requested the New York court to render a judgment confirming the JAMS arbitration award.

12. On 16 July 2019, the New York court entered an order granting the Verified Petition and directing the parties to meet and confer to reach an agreement on the form of a judgment confirming the JAMS arbitration award.

13. On 18 November 2019, counsel for Siddiqui submitted a proposed judgment confirming the JAMS arbitration award. Accordingly, Siddiqui has agreed to a form of judgment that confirms the JAMS arbitration award.

14. No party has objected to the form of judgment filed by Siddiqui's counsel.

15. Thus, although no final judgment has been entered yet, the New York court has issued an order granting the Verified Petition, and Siddiqui has filed a proposed form of judgment confirming the JAMS arbitration award.

16. In view of this record, I have no reason to believe that the New York court will refuse to enter a final judgment confirming the JAMS arbitration award."

58. While unsubstantiated by Mr. Siddiqui's evidence, Mr. Diel divulged that Mr. Siddiqui intends to appeal the Final Award through the New York Court system. Mr. Diel explained that the filing of the judgment in the New York Court was a procedural pre-requisite to an eventual appeal against the judgment.

59. Proceeding on the basis that judgment has not yet been entered in the New York Court and that it will be open to Mr. Siddiqui to appeal against the Final Award once judgment is entered in respect of the Final Award, it seems to me that it would be pre-mature of this Court in any event to treat the Final Award as: (i) a judgment entered by a Court of competent jurisdiction; and/or (ii) a final and non-appealable judgment entered by a Court of competent jurisdiction.

Effect of Advance made by Apollo in respect of 50% of Mr. Siddiqui's Expenses

60. I have found that Mr. Siddiqui is entitled to coverage of his expenses in accordance with Bye-law 56.1. It is plainly the case that Mr. Siddiqui should be reimbursed by Athene for all of the expenses he has incurred to date in defending himself in these proceedings. Of course, Mr. Siddiqui will be compelled to fully reimburse Athene (as he has indeed undertaken through his Counsel to do) should any final and non-appealable judgment in these proceedings contain findings that he acted dishonestly or fraudulently in relation to the Company.

61. Mr. Siddiqui also seeks advances from Athene to cover the upcoming expenses of these proceedings. On the same basis that Mr. Siddiqui is entitled to the indemnity under Bye-law 56.1, Mr. Siddiqui is also entitled to an advance under Bye-law 56.2.

62. Of particular controversy, Mr. Siddiqui seeks full coverage from Athene, absent any discount accounting for the value of the indemnity he has received from Apollo in respect of his legal expenses. Mr. Diel contends that Mr. Siddiqui is entitled to look to Athene as "*the indemnitor of first resort*" pursuant to Bye-law 56.12 which provides:

"*The Company hereby acknowledges that the indemnities under this Bye-law 56 (the "**Indemnified Persons**") may have certain rights to indemnification, advancement of Expenses and/or insurance provided by shareholders, members of the Apollo Group, or other affiliates of the Company or Affiliates of members of the Apollo Group ("**Shareholder Affiliates**") separate from the indemnification and advancement of Expenses provided by the Company under these Bye-laws. The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to the Indemnified Persons under these Bye-laws are primary and any obligation of any Shareholder Affiliate to advance Expenses or to provide indemnification for the same Expenses or Liabilities incurred by the Indemnified Persons are secondary), (ii) that the Company shall be required to advance the full amount of Expenses incurred by the Indemnified Persons and shall be liable for the full amount of all Expenses and Liabilities paid in settlement to the extent legally permitted and as required by Bye-law 56, without regard to any rights the Indemnified Persons may have against any Shareholder Affiliate, and (iii) that the Company irrevocably waives, relinquishes and releases the Shareholder Affiliates from any and all claims against the Shareholder Affiliates for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by any Shareholder Affiliate on behalf of a Indemnified Person has sought indemnification from the Company pursuant Bye-law 56 shall affect the foregoing and the Shareholder Affiliates shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Indemnified Person against the Company. For the avoidance of doubt, no Person providing directors' or officers' or similar insurance obtained or maintained by or on behalf of the Company, and of its Affiliates*

or any of the foregoing's respective Subsidiaries, including any Person providing such insurance obtained or maintained pursuant to Bye-law 56.4, shall be, or be deemed to be, a Shareholder Affiliate."

63. Apollo is required to pay 50% of the total amount of Mr. Siddiqui's litigation expenses in relation to these proceedings. Mr. Taylor argued that any award of indemnity from this Court should be reduced by 50% to avoid a double-recovery. In Mr. Taylor's written submissions he says [21-23]:

"*21. Pursuant to a Stipulation and [Proposed] Order in the JAMS Arbitration, Apollo is required to pay 50% of the total amount of all statements for litigation expenses presented by the First Defendant in connection with these proceedings…*

22. Inexplicably, the First Defendant suggests that the Plaintiff should nevertheless advance his litigation expenses "…without regard to amounts Apollo has to date advanced and without regard to Apollo's advancement obligation to me"… No good reason is given for this remarkable proposition.

23. If this Honourable Court is minded to order that the Plaintiff advance the litigation expenses of the First Defendant, the Plaintiff's respectful submission is that only 50% of the First Defendant's litigation expenses can be ordered to be advanced, given that the First Defendant had been receiving- and likely is still receiving – an advancement of 50% of his litigation expenses in these proceedings from Apollo."

64. In my judgment, there is no ambiguity in the wording of Bye-law 56.12. Athene's responsibility to cover Mr. Siddiqui's expenses is neither subordinate nor equal in priority to any other shareholder affiliate. For that reason, I do not accept Mr. Taylor's submission that Athene should only be held responsible for 50% of Mr. Siddiqui's expenses while Apollo is made to carry the burden of the other half.

65. On the proper application of Bye-law 56.12, Athene must be held responsible as the indemnitor of first resort. This means that Athene is obliged to pay the full sum of the advances to cover Mr. Siddiqui's upcoming litigation expenses in addition to providing payment of the sums which would provide Mr. Siddiqui with a full indemnification of the expenses already incurred in these proceedings.

66. Athene's indemnity obligations are subject to the requirement that Mr. Siddiqui undertakes to fully reimburse Athene if a final and non-appealable judgment emerges from these proceedings which contains findings that Mr. Siddiqui acted dishonestly or fraudulently in relation to Athene.

67. Mr. Siddiqui must also reimburse Appollo for the sums advanced to cover 50% of his litigation expenses in these proceedings, once such sums have been paid by Athene in equal value.

Conclusion

68. The 1st Respondent's summons dated 22 October 2020 is granted.

69. Any application as to costs shall be heard on the papers and filed under the cover of a Form 31P.

Dated this 15th day of April 2021

_____

THE HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT