



## CARIBBEAN COURT OF JUSTICE

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**MEDIA RELEASE**  
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**CCJ DISMISSES APPEAL OF BLAIRMONT RICE INVESTMENTS INC; CALLS FAILURE TO MAKE PAYMENTS FOR AN ENTIRE YEAR A SERIOUS BREACH OF CONTRACT**

**Port of Spain, Trinidad and Tobago.** In a judgment released today, the Caribbean Court of Justice (CCJ) dismissed an appeal from Guyana in the matter of *Blairmont Rice Investments Inc v Kayman Sankar Investments Ltd, Kayman Sankar and Company Ltd and Beni Sankar* [2021] CCJ 6 (AJ) GY and affirmed the orders of the Court of Appeal. The Court heard the appeal on 26 January 2021.

Blairmont Rice Investments Inc (the “purchaser”) and Kayman Sankar Investments Ltd, Kayman Sankar and Company Ltd and Beni Sankar (the “vendors”) entered into three contracts in December 2006 for the purchase and sale of lands in Von Better, Berbice Guyana. At the time, the parties understood that the purchase price was to be used to satisfy the vendors’ debt which they owed to the bank. Payment of the purchase price was spread over nine years with twice-yearly instalments which were to be paid in June and December of each year. The purchaser did not pay either of its instalments for the year 2010 even though the vendors reminded them that payments were due. As a result, by letter dated 17 January 2011, the vendors communicated to the purchaser that they accepted that the contracts were terminated and would now treat the commercial relationship between the parties as being over. The purchaser did not accept that the contracts were terminated, and this prompted the vendors to take legal action. At the time when legal action began, the purchaser had been struck off the register of companies.

The High Court decided in favour of the vendors and the purchaser appealed to the Court of Appeal. That court decided that the payment clause was an “essential” or very important term and a breach (or failure to comply) with it went to the heart of the contract, causing the contract to be terminated. The purchasers appealed to the CCJ, and this Court determined that there were two issues to be addressed: 1. was the purchaser’s failure to make payment in 2010 so serious a breach as to allow the vendors to terminate the contracts? 2. Considering that the purchaser was a company that had been struck off the register of companies, could it defend itself in this legal action?

The CCJ, in a majority judgment delivered by Justice Burgess, determined that the payment clause was an “innominate” or “intermediate” term (this is a term in a contract that could be breached in

either in a minor or a significant way). In coming to this decision, the Court said that the question to be asked was what a reasonable person would have understood the parties to mean by use of the language in the payment clause. In considering the language, it was clear that there were a variety of consequences that could be caused by the failure to make the payments. Therefore, the payment clause was an “innominate” or “intermediate” term. The Court then looked at the consequence of the breach and decided that it was a significant one because it deprived the vendors of the whole benefit of the agreements. The benefit was that the payments be made in a timely manner to prevent the vendors from losing their properties to the bank. Given the significance of the breach, the vendors could rightly terminate the contracts.

As to the second issue, the Court decided that a company that has been struck off the companies register is not to be treated as if it no longer exists in law, rather, it is to be treated as if its personality in law is suspended. Company law in Guyana (section 488 of the Companies Act Cap 89:01) ensures that companies that are struck off the register cannot escape their liabilities and therefore, a person could bring a legal action against a struck off company so as to hold it accountable. For this reason, the Court decided that the purchaser could defend the action brought against it by the vendors. The Court said that this interpretation of the law is one that is rational, reasonable, and fair.

Justice Jamadar in a concurring judgment added that innominate or intermediate terms were part of Caribbean contract law even though this had not been widely explored in regional case law. He said that the classification of terms as “innominate” allows for flexibility and advances the development of Caribbean law. Justice Jamadar agreed that the payment clause was an innominate term and breach of it made the central purpose, i.e., *the satisfaction of the Vendor’s indebtedness to the bank*, unrealisable.

President Saunders agreed with the result reached by the majority on the first issue but in his view, the payment clause was a condition (meaning a term of a contract that is so significant or important that it goes to the “heart” of the contract). In relation to the striking off the register issue, President Saunders disagreed with the majority. He found that a struck off company could not ordinarily bring a legal action or have a legal action brought against it. However, section 488 of the Companies Act created an exception where a person could enforce a liability against a struck off company once that liability existed while the company was registered. Section 487(5) of the Companies Act allowed a person with such a claim of an existing liability against a struck off company, to have that company restored to bring legal action against it. The President found that in the present case, the legal action brought was not an existing liability, rather it was a case to determine whether a liability even existed. And so, the legal action could not fall under the exception created by section 488. The President concluded that the proceedings had no legal effect.

The Court decided that the Appellant had standing and dismissed the appeal, thereby affirming the orders of the Court of Appeal. The Court also ordered that the Appellant pay to the Respondents, basic costs in the sum of GY\$ 1,750,250.00. The Court comprised the Hon. Mr Justice Saunders, President, the Hon. Mr Justice Jacob Wit, the Hon. Mme Justice Rajnauth-Lee, the Hon Mr Justice Burgess, and the Hon. Mr Justice Jamadar. Ms Jamela Ali SC, Mr Sanjeev Datadin and Mr Donavan Rangiah appeared for the Appellant. Mr Juman-Yassin SC and Mr Teni Housty appeared for the Respondents.

The full judgment of the Court is available on the Court’s website at [www.ccj.org](http://www.ccj.org).

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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 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.

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