



**AND FURTHER TAKE NOTICE** that the **FOUNDATIONS** of this appeal are:

**Ground 1 - The Limitation Law**

The learned Chairman erred in law at page 4, ground 4 of her ruling of 3<sup>rd</sup> February, 2005 in accepting arguments articulated by the Second Respondent regarding section 11 of the Limitation Law at page 16 of the Transcript of Hearing of 25<sup>th</sup> September, 2003.

**Ground 2 - Calculation of Latest Basic Wage**

The learned Chairman erred in law in not applying or properly applying Section 41 of the Labour Law (2001 Revision) to determine the Appellant's latest basic wage. The learned Chairman wrongly accepted the argument of the Second Respondent at page 12 (top left column) of the transcript of hearing on 25<sup>th</sup> September, 2003, that the Appellant's latest basic wage is based upon the amount of draw-down the Appellant could make against his commission on all sales, which draw-down was at all times discretionary - and again within that same paragraph that the Appellant's latest basic wage was stated in the Appellant's work permit application. The Appellant's basic wage should be calculated in accordance with the Labour Law.

**Ground 3 - Duplication of Awards**

The learned Chairman erred in law in accepting ground 8 of the Second Respondent's Grounds of Appeal, that there is some duplication between the award made for severance pay and compensation for unfair dismissal. Severance pay is governed by s. 41 of the Labour Law (2001 Revision) and compensation for unfair dismissal is governed by s.55 Labour Law (2001 Revision) thus, two separate awards.

**Ground 4 - Frustration**

That the learned Chairman erred in law at page 4, ground 6 of her ruling that the Appellant's five year contract was frustrated by operation of law and that any award made to the Appellant should be with respect to the two year contract. The learned Chairman failed to consider relevant evidence and argument on behalf of the Appellant that the Appellant's contract of employment was continuous. (See page 21 of Transcript of hearing on 25<sup>th</sup> September, 2003).

**Ground 5 -Non-Compliance with s. 78(8) of Labour Law (2001 Revision)**

The learned Chairman erred in law in her ruling of 3<sup>rd</sup> February, 2005 in finding at grounds 7 and 8 that the calculations for the award of severance pay and compensation for unfair dismissal should be recalculated without giving any written reasons in accordance with s. 78(8) of the Labour Law (2001 Revision).

Dated the 29<sup>th</sup> day of March, 2005



---

Margeta Facey-Clarke  
Facey-Clarke & Associates  
Attorneys-at-Law for the Appellant

TO:           The Clerk of the Court

AND TO:     The Chairman of the Labour Appeals Tribunal

AND TO:     Truman Bodden & Company  
              Attorneys-at-Law for Morritt Properties Cayman Ltd.

This Notice of Originating Motion was issued by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiff herein whose address for service is Unit 119, Ground Floor, Elizabethan Square, George Town, Grand Cayman