



V Annual Caribbean Court of Justice International Law Moot (2013)

Vaughn Benjamin

v

State of Barbados

Vaughn Benjamin was born at the Queen Elizabeth Hospital, Barbados, in 1970, to Michael and Sharon Benjamin, both nationals of Trinidad and Tobago, who had emigrated to Barbados in the 1960s. Vaughn was educated at Harrison College and the Cave Hill Campus of the University of the West Indies in Barbados, having obtained Barbadian citizenship on the basis that he was born there. His parents insisted, however, that he should retain his “roots” and at age 18 Vaughn applied for and obtained a Trinidad and Tobago passport.

In 1995, Vaughn obtained employment in Barbados at “Talking Computers” as a computer analyst and rapidly rose through the ranks to become chief programmer, earning a very good salary, most of which he was able to save because he lived at home with his parents.

In 2011, Vaughn’s parents decided to return to Trinidad to retire and to reconnect with their family. Vaughn immediately sought employment in Trinidad and in 2012 accepted a very well paid executive position with “Creative Computer Solutions” on Frederick Street. Vaughn decided to purchase a house in Federation Park, Port of Spain, costing US\$2million which he proposed to finance by:

- (a) transferring his life savings of B\$2million (approximately US\$1million) from the Royal Bank of Barbados (“RBB”); and
- (b) obtaining a mortgage from the RBB for the remaining US\$1million using the title to the house in Federation Park as collateral.

Vaughn was correctly informed that:

- (i) since the global financial crisis of 2009 Barbados Government regulations do not allow export of capital over B\$100,000 per annum without the written approval of the Central Bank of Barbados (“CBB”), and the CBB will refuse approval because of the wide disparity between the general cap and the amount proposed;

- (ii) the RBB has a prudential practice of not accepting the title of “foreign” property as security for a mortgage unless the property is located in the United States of America.

Vaughn argued that the Barbados regulations are contrary to Articles 38-40 of Revised Treaty of Chaguaramas in that they deny him the right to move his capital freely within the Caribbean Community. He also argued that Barbados has breached its treaty obligation in allowing the RBB to refuse acceptance of property located in Trinidad as security for a mortgage on the basis of the commercial policy adopted by the RBB.

Vaughn approached and obtained the permission of Trinidad and Tobago government to bring proceedings against Barbados in the Original Jurisdiction of the Caribbean Court of Justice (“CCJ”). He then obtained special leave under Article 222 of the Revised Treaty to initiate proceedings against Barbados before the CCJ.

In response to Vaughn’s arguments, Barbados contends that:

1. it incurred no immediately-binding obligations under Articles 38-40 as these provisions were of a “soft law” nature and were not self-executing;
2. the regulations in dispute were necessary to safeguard its balance of payments position as permitted under Article 43; and
3. it cannot be held responsible for the prudential policy adopted by private banks in their assessment of financial risks.

Vaughn counters that:

1. Articles 38-40 were sufficiently specific to be enforceable and that more than a reasonable time has elapsed for COFAP, the Council for Finance and Planning, to have implemented a programme for the removal of restrictions on the movement of capital payments;
2. restrictions for balance of payments reasons can only last for 18 months (Article 43 (2) (d));
3. CARICOM member states have a duty under the Revised Treaty to take steps, through legislation or otherwise, to constrain any form of conduct that would seem seriously to hamper the smooth functioning of the CSME. Interestingly, there is, in fact, a draft CARICOM Financial Services Agreement which includes a provision encouraging the acceptance by CARICOM financial institutions of assets located in another CARICOM country as collateral.

Leading counsel will deal with the issues related to Articles 38-40 and 43 of the Revised Treaty, and junior counsel will deal with the issue of responsibility of the State for the relevant private banking practice of the RBB.