

## Board in breach

14 former SporTT execs must pay \$560,000 for negligence in \$34M LifeSport contract



High Court Judge Ricky Rahim



Former Sports Company of T&T chairman Sebastien Paddington

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The boards of State enterprises are not “rubber stamps” for the government that appointed them.

High Court Judge Ricky Rahim made the statement yesterday, as he upheld a landmark breach of fiduciary duty case against former Sports Company of T&T Limited (SporTT) CEO John Mollenthiel and his board members, over their role in facilitating a failed \$34 million contract for the controversial and now-defunct LifeSport programme.

Justice Rahim found that Mollenthiel and the former board members, led by chairman Sebastien Paddington, did not act in the company’s best interest when they approved the contract with eBeam Interact Limited on the instructions of Ministry of Sport officials in December 2012. He found that they should have raised concerns over eBeam’s ability to perform its contractual obligations, based on a multitude of errors in its proposal for the programme, instead of simply seeking to implement the ministry’s directive.

“On the evidence before the court, none of the directors raised genuine questions in relation to the information that was provided to them and sought to be satisfied before making an informed decision,” Justice Rahim said, as he noted the decision was taken with “much haste” as it was “propelled” by Mollenthiel.

“The decision required the ex-ercise of care and diligence of a reasonably prudent person and on all counts on the evidence, the defendants failed at doing so,” he added.

Justice Rahim also rejected claims from the former board that seeking to raise issues with the ministry’s instructions would have pitted them against the then People’s Partnership government.

“In fact, the adherence to the duty would have had the contrary effect and would have acted as a check and balance in this case where the Ministry of Sport had, in real terms, in fact, made the decision to select the service provider,” he said.

While SporTT was seeking significant compensation based on the value of the contract, Justice Rahim only ordered each of the directors and Mollenthiel to pay \$40,000, a total of \$560,000, in nominal damages for their breach.

Justice Rahim ruled that SporTT suffered a loss as a result of the failed contract, but noted that such was difficult to quantify as eBeam provided some services. He also noted that the government

guaranteed and repaid the loan obtained by the SporTT to pay eBeam for the contract.

“In the court’s view, the loser in the entire transaction was in a real sense not the claimant but the government of T&T and by extension the people of T&T who were to benefit from the programme,” Justice Rahim said.

“The responsibility for that loss must, however, fall at the feet of the defendants whose breach of duty resulted in the loss to both the claimant and the GORTT through the claimant,” he added.

Justice Rahim also expressed disappointment that the board’s actions caused the failure of that aspect of the LifeSport programme.

“Through their actions, the board permitted a programme which had the potential to radically change the lives of the youths of this country to degenerate into a debacle,” he said.

The lawsuit centred around the contract with eBeam to provide the literacy, numeracy and technology component of the LifeSport programme, which was intended to target at-risk youths between 16 and 25 years.

The Ministry of Sport directed the board to award the contract to eBeam through a sole select tender, instead of through an open procurement process and it complied. eBeam was paid in two tranches but the contract was eventually terminated based on its failure to meet its obligations.

The other defendants in the case were Chela Lamsee-Ebanks, Reynold Bala, Norris Blanc, Nisa Dass, Dr Anyl Gopeesingh, Cheemattee Martin, Matthew Quamina, Annan Ramnanansingh, Kent Samlal, Harnarine Seeram Singh, and Milton Siboo.

Singh died while the case was still pending and a relative was substituted to represent his estate. Samlal, an attorney, was most recently appointed to the three-member tribunal that will hear challenges to detention orders issued under the ongoing State of Emergency (SoE).

In defence of the lawsuit, Khayyam claimed she was aboard when the decision to award the contract was first approved by her fellow board members through a “round robin” process.

Blanc and Quamina also claimed they had raised concerns over eBeam’s suitability, while Martin claimed she initially refused to vote on the issue, as she was given too short notice.

Justice Rahim rejected their claims, as he noted that they eventually ratified the decision months later despite their initial concerns or absence.

“There would have been nothing which prevented the board from reverting to the Ministry of Sport in relation to its concerns about the documents before it were clearly showing and asking for further information or clarification, or any matter whatsoever that would have been in keeping with their duty,” he said.

As part of his judgment, Justice Rahim also ordered the former board to pay SporTT’s legal costs.

However, they will not be required to immediately pay the legal costs and compensation, as Justice Rahim granted a 42-day stay of his orders to give them time to consider an appeal.

In addition to the claim against the former board members, SporTT also pursued a breach of contract case against eBeam.

In August last year, High Court Judge Eleanor Donaldson-Honeywell rejected SporTT’s case against eBeam but still ordered it (eBeam) to pay \$30 million in restitution, as she ruled that it was unjustly enriched for services it did not provide.

While SporTT was seeking the entire value of the contract, Justice Donaldson-Honeywell deducted \$4 million, which represented the nominal services, inclusive of the procurement of equipment provided by eBeam.

SporTT was represented by Colin Kangaloo, SC, John Lee and Stephanie Moe.

The group's lawyers included Fyard Hosein, SC, Anthony Vieira, SC, Rishi Dass, SC, Jagdeo Singh, Karina Singh, Keston Lewis, Roger Kawalsingh, Ravi Mungalsingh, Tara Bhariosingh, Nicole de Verteuil-Milne, Adrian Ramoutar, Sushma Gopeesingh, Kamini Persaud-Maraj, Neal Bisnath, Lydia Mendonca, Richard Jagai, Andrea Bhagwandeem and Dharmendra Punwassee.