

COMMONWEALTH OF DOMINICA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

CLAIM NO. DOMHCV 2024/0213

IN THE MATTER OF THE BAIL ACT # 20 OF 2020, SECTION 4(3), (4) AND SECTION 7(1)(2)

AND

**IN THE MATTER OF AN APPLICATION FOR BAIL BY JONATHAN LEHRER THAT BAIL BE GRANTED HIM
WITH OR WITHOUT CONDITION**

BETWEEN

JONATHAN LEHRER

APPLICANT

AND

CHIEF OF POLICE

FIRST DEFENDANT

DIRECTOR OF PUBLIC PROSECUTIONS

SECOND DEFENDANT

Before:

The Hon. Mde. V. Georgis Taylor-Alexander High Court Judge

Appearances:

Mr. Thomas Astaphan KC, together With Ms. Sherma Dalrymple, Director of Public Prosecutions,
Mr. Kevin Julien and Ms. Daina Matthew for the Defendants; Mr. Andrew Pilgrim KC, together with
Mr. Lennox Lawrence, Dr. David Dorsett, Mr. Wayne Norde and Ms. Jodie Luke for the Applicant

2025: January 16;17;
February 6

JUDGMENT

- [1] **TAYLOR-ALEXANDER J:** This is an application filed on the 23rd December 2024 for the variation of conditions of bail contained in the Judgment of the Court dated the 19th and 26th of November 2024 and registered on the 28th of November 2024.

Brief Facts

On the 5th of December 2023, the Applicant was jointly charged with another person on two counts of murder. He was remanded to the state prison. On the 26th of November 2024, the Applicant was granted bail in the sum of XCD1,000,000, with one surety in the like sum of XCD1,000,000.

- [2] By Order after Judgment issued on the 26th of November 2024 replicating paragraph 106 of the written Judgment, the Learned Judge imposed the following conditions on the grant of bail: -

- “1. The surety, who is to be approved by the Registrar of the High Court, must be a family member, or a business associate, or someone of similar stature, who in the opinion of the Registrar has significant influence in relation to the Applicant and is capable of ensuring that the Applicant abides by the conditions of his bail;
2. The Applicant must not communicate, directly or indirectly (including via social media or through a third party) with any witness about this case;
3. The Applicant must attend Court on the 10th of December 2024 and all adjourned dates until the conclusion of the matter;
4. The Applicant may be permitted to travel out of the Commonwealth of Dominica for medical purposes, but must secure the approval of a Judge of the High Court, and provide details as to the dates of travel (including date of return), proposed address while overseas, and the medical facility he intends to visit;
5. The Applicant would have to provide proof to the Registrar that he has revoked his American citizenship prior to being allowed to travel out of the Commonwealth of Dominica;

6. The Applicant must provide a sworn undertaking that he would not seek to reactivate his American citizenship while on bail;
7. The Applicant shall file, if necessary under seal, an updated medical report upon any travel overseas;
8. The Applicant must commit to returning to the Commonwealth of Dominica upon conclusion of any medical procedure; and to not travel to and remain in any third country, that is, any country other than that to which approval was given;
9. The Applicant shall provide a solemn guarantee to pay for any and all expenses that may be incurred by the State in seeking to have him returned to Dominica, in the event that he does not do so voluntarily and immediately after his medical procedures;
10. The Applicant shall provide an irrevocable consent to be extradited. Such an undertaking would indicate that he would not contest extradition, (should it become necessary to seek his extradition);
11. The Applicant undertakes not to breach the laws of the United State of America or any country to which he travels for medical attention, while he is within such other country's borders;
12. The Applicant prior to any overseas travel shall consent to having a tracking device fitted to his body;
13. The Applicant upon his return to Dominica, shall reside at Bois Cotlette Estate, and not leave the Commonwealth of Dominica without first getting the approval of a Judge of the High Court;
14. The Applicant upon his return to Dominica, must report to the Grand Bay Police Station, once a week, on Monday's to sign in, sometime between 6:00 am and 6:00 pm;
15. If the Applicant breaches any condition of his bail, or if he is charged with any offence anywhere which has a prescribed penalty of at least two years imprisonment, then his recognizance becomes liable to be forfeited and his bail may be revoked."

[3] In accordance with paragraph 1 of the order, a proposed surety appeared before the Deputy Registrar on December 19, 2024, for an interview. While the details of the interview and any assurances given regarding its outcome are contested, the Deputy Registrar issued an order on January 10, 2025, following the filing of an application to vary the conditions of bail. This order reflected her decision based on the interview. It is essential to reference her order, in which she concluded:-

“UPON Counsel for the Claimant Mr. Lennox Lawrence and Jodie Luke Counsel and the proposed Surety Rhoda Joseph appearing in chambers and Counsel informing of his intention for the Surety to be Examined by the Registrar;

UPON the court posing certain questions to the proposed Surety and after a short discussion, informing Counsel that on the face of it the surety appeared to be proper;

UPON being of the view and informing Counsel Lawrence later in the day that there were additional issues to be addressed, which formed part of the bail conditions and requesting that these be filed, including the consent and the guarantee.

UPON Counsel Lawrence being notified via telephone on 17th of December, 2024 that the court required guidance on a specific point and the court having clarified that no undertaking had been given by it or any recognizance indicating the proposed surety's suitability signed;

UPON the court, after further consideration of the Affidavit and Certificate of Exhibit Filed 16th December 2024 and on 19th December, 2024, contacting Counsel Lawrence requesting a further meeting at which counsel and the proposed surety were informed that upon further review of the documents filed by the proposed surety, there was additional information stated in the proposed surety's affidavit that required further consideration;

UPON THE COURT BEING OF THE VIEW that the surety, who is to be approved by the Registrar of the High Court, must be a family member, a business associate, or someone of similar stature, who, in the opinion of the Registrar, has significant influence in relation to the applicant and is capable of ensuring that the applicant abides by the conditions of the bail;

UPON careful consideration of the affidavit of Rhoda Joseph filed on 16th December, 2024, and the Certificate of Exhibit filed on the same date, the court was of the view that:

1. Relationship to the Applicant

The proposed surety avers in her affidavit to be a *de facto* family member, stating that she has known Mr. Lehrer for 15 years and has assisted with the upbringing of his children. While this establishes familiarity, it does not equate to the ordinary meaning of “family member” or “someone of similar stature”. Moreover, the averments only disclose a bond and “close” relationship with the children, it does not however establish the relationship with Mr. Lehrer which would satisfy that she possesses the requisite control over the Applicant to ensure compliance with the bail conditions. As such the court is unsatisfied that paragraph one of the bail condition is met;

2. Surety:

In the granting of bail the proposed surety must establish that she poses the sum required to secure bail as directed by the Court. This sum must be available if the applicant breaches bail conditions. The Affidavit of the propose surety indicates that there is a caveat on the property, which she gives an undertaking that it will be removed. The proposed surety has failed to disclose the different equity vested in the company. There are third party equity rights which are evidenced on the title. The quantum of all the identified ownership right are unknown. Additionally, as it relates to the undertaking given by the proposed surety to remove the caveat, such power is not vested in the proposed surety at this time. Furthermore, while a shareholder may hold certain rights, conditions and privileges, these remain unspecified in this case. Additionally, the maximum shares of the company and the share capital of the same has not been presented to assist in evaluating the value of the ownership rights in the property. On the premises above, the proposed surety Affidavit including exhibits is insufficient to satisfy being a proper and suitable surety at this time;

AND UPON THE COURT BEING OF THE VIEW that the proposed surety does not have significant influence over the Applicant, nor is she capable of ensuring that the Applicant abides by the conditions of his bail.

IT IS HEREBY ORDERED –

1. The proposed surety as put forward by the applicant is unsatisfactory.
2. Counsel shall either propose an alternative surety or provide additional details to satisfy the conditions of bail.”

The Application for Variation

- [4] On December 23, 2024, following the oral decision of the Deputy Registrar, the Applicant filed this application seeking a variation of the terms and conditions of bail as established in the judgment of the Learned Judge on November 26, 2024. The Applicant requests a modification of paragraph 105 and the deletion of paragraph 106(1), proposing instead that bail be set at the sum of XCD 1,000,000. Alternatively, the Applicant seeks to retain paragraph 105 while amending paragraph 106(1) to reflect that Ms. Rhoda Joseph, the surety approved by the Registrar on December 17, 2024, be recognized as a suitable surety of comparable stature to a family member or business associate, with the necessary influence over the Claimant to ensure compliance with the bail conditions.
- [5] Further, the Applicant requests variations to paragraphs 106(5) and (6), suspending their operation for the duration of the Claimant's medical treatment in the United States or at a medical facility there. Additionally, the Applicant seeks a modification of paragraph 106(13) to stipulate that upon the Claimant's return to Dominica, he shall reside at an address to be disclosed to the court under seal, with restrictions on leaving the Commonwealth of Dominica without the court's permission. Finally, a variation is sought for paragraph 106(14), specifying that upon his return to Dominica, the Applicant shall report to the Roseau police station once a week, between 6 a.m. and 6 p.m., to sign in.
- [6] The grounds of the application are that: -
- (a) The Registrar had approved the surety on 7th December 2024 but then disapproved the selfsame surety to (2) days later on 19th December 2024.

- (b) The revocation of American citizenship is a more involved process than a simple declaration but requires action of the functionaries of the American Government of which he has no control.
- (c) The Applicant wishes to obtain medical treatment in the United States, and if he revokes such citizenship access to medical insurance and medical care will be at a premium, which will impose a heavy financial burden on the Applicant.
- (d) If he revokes his citizenship, that since 26th November 2024, it has become more urgent for the Applicant to travel for health reasons. Denouncing United States citizenship places the Applicant at a real risk of being denied a U.S. visa and entry to the United States, and he requires entry for medical purposes.
- (e) The Applicant requires residence alternate to Bois Cotlette Estate, as he has been threatened. He requests reporting to the Roseau Police Station.

Identification of the issues arising on the application for variation

[7] During the hearing of the application on January 14, 2025, the parties mutually agreed that the renunciation or revocation of U.S. citizenship falls within the discretionary authority of the U.S. State Department. Consequently, it was determined that such a condition could not reasonably be imposed or enforced as part of the Learned Judge's order. In light of this, I have concluded that an order amending paragraphs 106(5) and (6) to suspend their operation until further order of the court is both appropriate and can be issued with the parties' agreement. Likewise, there was no opposition to the application to amend paragraph 106(14) regarding the Applicant's change of residence and reporting requirements within Dominica.

[8] No evidence was presented before me regarding the Applicant's medical condition, the availability of treatment within the Commonwealth of Dominica, the specific aspects of the treatment necessitating attention outside the jurisdiction, the proposed duration of overseas treatment, or any plan for managing the murder proceedings during the Defendant's absence. Notably, neither the Applicant nor the Respondent placed significant emphasis on this aspect of the application, and this was entirely understandable. A court order granting bail cannot be indefinite; it must be framed within reasonable and justifiable parameters, as its primary purpose is to ensure the Applicant's attendance at all court proceedings related to the double murder case whenever required.

- [9] An Applicant on bail who possesses travel documents without restrictions increases the potential risk of flight. Therefore, any application to travel outside the Commonwealth of Dominica while on bail should be made on a case-by-case basis, providing specific details such as appointment dates, the duration of any medical intervention (if applicable), and the location and justification for seeking treatment overseas. Such applications must be subjected to particularly close scrutiny, especially when the Applicant is a non-national or a citizen of another state, as this elevates the risk of absconding.
- [10] The parties' submissions, both oral and written, primarily focused on the bail condition set out in paragraph 106(1) of the written judgment. The Learned Judge directed that the surety, to be approved by the Registrar of the High Court, must be a family member, business associate, or someone of similar stature, someone whom the Registrar deems to have significant influence over the Applicant and capable of ensuring the Applicant's compliance with the bail conditions.
- [11] The Registrar's findings on the proposed surety, Rhoda Joseph, were that while the information in her affidavit indicates some degree of familiarity with the Applicant, it does not meet the ordinary meaning of "family member" or "someone of similar stature." Furthermore, the Registrar concluded that the relationship between Ms. Joseph and the Applicant does not demonstrate the requisite control needed to ensure compliance with the bail conditions.
- [12] Additionally, the security proposed by Ms. Joseph involves a property encumbered by a caveat, for which she has given an undertaking to remove. The property is held by a company with third-party equity rights. Notably, Ms. Joseph only recently became the owner of a single issued share in the company, which was transferred to her by the Applicant following his arrest.
- [13] The Registrar concluded that the proposed sum of security for bail must be a readily available amount in the event of a breach of bail conditions. However, the evidence presented did not convince the Registrar that this sum was readily accessible. Furthermore, the full extent of the ownership rights over the identified assets remained unclear. Additionally, with regard to the undertaking given by the proposed surety to remove the caveat, the Registrar noted that such authority had not been vested in the proposed surety at that time.
- [14] Following the Registrar's oral decision, steps were taken to transfer the property from the company to the sole ownership of the proposed surety. At the time of the hearing for the variation of bail, counsel for the Applicant informed the court that all relevant documentation had been submitted and was pending registration with the appropriate department.

[15] Despite this change in circumstances, the Respondent persisted in its objection to both the proposed surety and the proposed security. The Respondent further submitted that the Applicant's efforts to transfer ownership of a property valued at over XCD 1,200,000 were effectively an indemnification or an agreement to indemnify the proposed surety against any potential liability she might incur as a surety, specifically in relation to securing the Applicant's surrender to custody. The Respondent argued that such an arrangement would violate section 18 of the Bail Act of Dominica.

[16] Based on the foregoing, I have identified the key issues for the disposition of the application for variation of bail as follows:

1. Whether the proposed surety meets the criteria set out in Section 10 of the Bail Act and in paragraph 106(1) of the Judgment of the Learned Judge.
2. Whether the transfer of ownership of the property intended to be used as bail security to the proposed surety constitutes an act of indemnification from liability, thereby violating Section 18 of the Bail Act.

The Applicant's Submissions

[17] The Applicant asserts that the unchallenged affidavit evidence establishes Rhoda Joseph as a de facto member of his family for the past 15 years. During this period, she cohabited with the Applicant and served as a stepmother to his children, caring for them until they reached the age of majority. Through these years of shared responsibility, she developed a strong familial bond with both the Applicant and his family. Additionally, the Applicant submits that the surety's affidavit of means provides clear and compelling evidence of her financial capacity to fulfill the requirements for bail.

[18] Rhoda Joseph further attests to her role as an advisor in the Applicant's business affairs, holding a Power of Attorney in both Insite Inc. and Bois Colette Inc., companies owned by the Defendant. Based on these professional roles, she asserts that she possesses significant influence over the Defendant and is capable of ensuring his compliance with the conditions of bail.

[19] The Applicant challenges the relevance of *R v Porter* [1908–1910] ALL ER 78, a case upon which the Respondent relies. The facts in *Porter* clearly establish evidence of a conspiracy, which the Applicant argues is distinct from the Respondent's case. Unlike *Porter*, the Respondent's arguments are based on mere speculation, sensationalized suggestions, and

innuendo, rather than substantive proof of any conspiracy. Therefore, the Applicant contends that *Porter* provides no meaningful support to the Respondent's position.

The Respondent's Submissions

[20] The Respondent submits that neither the initial arrangement, in which the Surety acquired a single issued share in a company wholly owned by the Applicant whose sole asset is a property valued at over XCD 1,200,000.00 nor the subsequent arrangement of transferring the property outright to the Surety, satisfies the required independence of the Surety. Both arrangements, the Respondent argues, demonstrate collusion between the Defendant and the Surety, as they result in the enrichment of the Surety by the Applicant, increasing the value of assets from just over XCD 100,000.00 to more than XCD 1,000,000.00 within a span of three weeks.

[21] The Respondent submits that when a Surety relies on a Defendant's assets, their financial interest in ensuring the Defendant's compliance is diminished. The Respondent submits that the Applicant's actions in both arrangements is an indemnification against liability to secure surrender to court of the Applicant, which is an offence under Section 18 of the Bail Act of 2020.

[22] The Respondent cited several authorities, notably **Wilson v Strugnell** (1881) 7 QBD 548, 45 JP 831, 50 LJMC 145, 14 Cox CC 624, 45 LT 219, in which M was charged with embezzlement and S became his surety for £100, receiving £100 from M to indemnify him against any loss incurred by acting as surety. The court held that the indemnity contract was illegal, and as no loss had been sustained, the £100 could have been recovered by M, had he not been adjudicated bankrupt. The money was ultimately recoverable by his trustee. Stephen J, in an obiter dicta, ruled that a contract to indemnify a surety against their liability is contrary to public policy, and therefore illegal and void. The effect of such a contract, he noted, is to undermine the public purpose of bail by depriving it of its intended security.

[23] The Respondent submits that proof of an intention to pervert or obstruct justice is not a necessary element of the offence, either at common law or under statute, and relies on the authority of **R. v. Porter** [1908–1910] ALL ER 78. This case involved a conspiracy to indemnify a surety, and the judgment of Lord Alverstone, C.J., at page 80, where he stated:

"We think, therefore, that JELF, J., was correct in holding that the appellant entered into an illegal contract; illegal because it tended to produce a public mischief. The learned judge rightly

held that the appellant, by being a party to that agreement, was guilty of a criminal conspiracy, and that it was not necessary to prove that he had intended to pervert or obstruct the course of justice."

[24] The Respondent contends that the arrangement between the Applicant and the proposed surety undermines the principles of independence and integrity that are fundamental to the bail process. This arrangement compromises the surety's financial independence and creates a direct conflict of interest.

The Law

[25] It is important to note that the Applicant has already been granted bail, and the current matter is not an application for its revocation, but rather a request for a variation of the bail conditions. With this distinction in mind, I will now address the key issues central to the application.

[26] Section 8 (7) of the Bail Act 2020 of Dominica under the rubric "Conditions of Bail" provides that where a court has granted bail in criminal proceedings, it may on application (a) by or on behalf of the person to whom it was granted; or by the prosecutor or a police officer, vary the conditions of bail or impose conditions in respect of bail that it has granted unconditionally.

[27] Section 9 provides:

"(1) Where a defendant is granted bail, the conditions mentioned in section 8 shall not be imposed on him unless the court considers that it is necessary to do so for the purpose of preventing the occurrence of any of the events mentioned in subsection (4) of section 8 or to enable, inquiries or a report to be made into the defendant's physical or mental condition.

(2) Subsection (1) also applies to an application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally."

[28] Section 10 of the Bail Act captioned "Bail with Sureties" provides:

(1) This section applies where a person is granted bail on condition that he provides a surety.

(2) In considering the suitability of a proposed surety, the court shall have regard amongst other things to

(a) the surety's financial resources or other means;

(b) the surety's character and any previous convictions of the surety; and

(c) the surety's proximity, whether in point of kinship, place of residence or otherwise to the defendant;

(d) the degree of control or influence the surety has over the defendant.

Does the prosed surety meet the criteria identified in Section 10 of the Bail Act and in paragraph 106(1) of the Judgment of the learned judge;

[29] The affidavit evidence presented before the Registrar and this court regarding the suitability of the proposed surety is derived from multiple affidavits: one filed on January 15, 2025, which incorporates and relies on an affidavit filed on April 9, 2024, as well as an affidavit filed on December 16, 2024.

[30] The evidence establishes that the proposed surety, Rhoda Joseph, resides in Canefield East, St. Paul's, in the Commonwealth of Dominica. She serves as the Executive Director of Invest Dominica and receives a fixed monthly salary from the Government of Dominica in connection with her role at the aforementioned authority. Additionally, she owns a property located in Pottersville, within the Parish of St. George, Commonwealth of Dominica. A valuation of this property, conducted in April 2024 by quantity surveyor Erick Shillingford, determined an open market value of \$975,000 and a forced sale value of \$875,000, with a realizable equity of just over \$100,000.

[31] Ms. Joseph is also the sole shareholder of BC North Inc., a company registered in Dominica under registration number 2023/C0088. This is a recently acquired shareholding acquired by a transfer of this share from the Applicant to the proposed surety. This company owns a 13.2-acre property at Bois Cotlette, registered in Register Book X21, Folio 75, which was acquired for \$1,350,000. A caveat had been filed against this property by Insight Inc.; however, the director of Insight Inc. has issued an order for its removal to ensure the title remains unencumbered for bail purposes. On November 30, 2024, an order for the withdrawal of the caveat registered by Insight Inc. was lodged. For the purpose of bail, Ms. Joseph pledges the certificate of title as recognizance for the grant of bail in the sum of \$1,000,000. A valuation conducted by land surveyor Kevin Seaman appraised the property at \$1,254,000.

[32] On November 29, 2024, a Memorandum of Transfer confirmed the sale of the property owned by BC North, with the payment of judicial fees and assurance fund fees, while the remaining fees are in the process of being settled. On December 19, 2024, Ms. Joseph filed a caveat to register and protect her beneficial interest while the title, pursuant to the Memorandum of

Transfer, undergoes registration. She asserts that, cumulatively, the properties she owns have a total value of \$2,325,000, thereby satisfying the financial threshold to act as surety for the Applicant.

[33] Ms. Joseph further attests that she has known the Applicant for 15 years and has cohabited with him. She was a stepmother to his three children and played an instrumental role in their upbringing, making key decisions regarding their education, choice of school, and general welfare. She developed a strong familial bond with the Applicant and his family, considering herself a de facto member.

[34] Additionally, she has served as an advisor to the Applicant in his business ventures, investments, and the expansion of his enterprises. Over the course of their 15-year relationship, she asserts that she became a trusted family member or an individual of comparable stature, possessing sufficient influence over the Applicant in matters concerning his children and business affairs.

[35] On December 15, 2023, the Applicant granted Ms. Joseph Power of Attorney (PA196/2023) concerning his Bois Cotlette Estate. This document confers extensive authority upon her, including the ability to manage and transact on all of the Applicant's bank accounts, deposit and withdraw funds, grant or terminate leases on his behalf, collect rents, and undertake construction, repair, or development of properties at her discretion, including hiring personnel as necessary. The Power of Attorney is irrevocable for one year, with the option for extension thereafter. Subsequently, on December 28, 2023, as Director of Insight Inc., the Applicant issued a further Power of Attorney (PA4/2024) in favour of Ms. Joseph, granting similar authority concerning Insight Inc.

[36] Ms. Joseph relies on these affidavits to support her assertion that she has functioned not only as a business associate of the Applicant but also as an individual with significant influence over him, ensuring his adherence to bail conditions. She submits that she is capable of exerting sufficient control to secure his compliance with court requirements, including his attendance at trial.

[37] She acknowledges her role and responsibilities as a surety, understanding that this obligation remains in effect until the final resolution of the matter. She affirms that she has undertaken this commitment freely, lawfully, and voluntarily, without any agreement for indemnification by the Applicant or any third party against potential liabilities as surety. Furthermore, in accordance

with Section 18 of the Bail Act, she confirms that she has not received any money, compensation, or monetary benefit in connection with her surety obligations.

[38] By his affidavit filed on the 16th of December 2024 the Applicant confirmed that Ms Joseph is a de facto member of his family and has assisted in nurturing his children to adulthood, and that she has significant influence over him and is capable of ensuring his compliance with the conditions of bail.

[39] The affidavits in response from the Respondents were filed by Jeffrey James, Assistant Commissioner of Police for the Commonwealth, on December 24, 2024, and by Sherma Dalrymple on January 10, 2025. In his affidavit, Jeffrey James asserts that Ms. Joseph does not meet the criteria of a responsible and prudent surety for the Applicant's bail. He disagrees with the claim that Ms. Joseph has sufficient influence or control over the Applicant.

[40] James further submits that Ms. Joseph lacks the financial means to fulfill the obligations of a surety. He also argues that her statements regarding a familial relationship with the Applicant are unsubstantiated, and she has failed to provide evidence proving that she is a de facto member of his family.

[41] He also submits that the transfer of shares to Ms. Joseph from BC North has not been registered with the Government's Companies and Intellectual Property Office and is conveniently reversible. He points out that the share transfer occurred on October 23, 2024, which coincidentally is the same date the Applicant renewed his application for bail, suggesting potential collusion between the proposed surety and the Applicant. This raises further concerns about the true ownership of the shares in BC North Inc., and he has been advised that the ownership remains with the Applicant. He argues that Rhoda Joseph cannot pledge property held in the name of a company and purport to own the company itself. He reiterates his concerns about the true ownership of the company.

[42] Ms. Sherma Dalrymple echoed her objection to Ms. Rhoda Joseph's suitability as a surety, emphasizing that there is no corroborating evidence to support Ms. Joseph's claim of being a de facto family member. She also reiterated her concern that, as a shareholder, Ms. Joseph does not legally own the company and therefore lacks the authority to pledge its assets as security.

[43] I share the concerns expressed by Mr. James and Ms. Dalrymple regarding Ms. Rhoda Joseph's ability to pledge the assets of a separate legal entity as a means of establishing her suitability as a surety. As a shareholder, Ms. Joseph does not hold ownership rights over the company's assets, nor does she have the authority to unilaterally direct their use. Therefore, pledging the company's assets would, in effect, position the company as the surety. However, the company is not in a position to take personal responsibility for ensuring the Applicant's compliance with bail conditions and court appearances.

[44] Furthermore, such an arrangement is inconsistent with the court's order, which stipulates that the surety must be a family member, business associate, or someone of similar stature who, in the Registrar's opinion, holds significant influence over the Applicant and is capable of ensuring his compliance with bail conditions.

[45] Nevertheless, it appears that these concerns have been rendered moot by a **Memorandum of Transfer** executed by BC North, which effectively transfers full ownership of the property to the proposed surety. This transfer is currently in the process of being registered.

Analysis of the Surety's Relationship and Influence over the Applicant

[46] I have carefully assessed the affidavit evidence filed in this case, along with the concerns raised therein. I find no basis to conclude that Rhoda Joseph has misrepresented the nature of her relationship with the Defendant or the influence she exerts over him. As a Dominican national and a senior public servant holding a position of prominence, there is no indication that she would deliberately mislead the court or compromise herself on such a material issue.

[47] The affidavit evidence she presents establishes multiple dimensions of the relationship between herself and the Applicant, each relevant to assessing whether she qualifies as a surety who can exercise significant influence to ensure the Applicant's compliance with bail conditions.

Familial Connection

[48] Ms. Joseph asserts that she has known the Applicant for 15 years and cohabited with him. She acted as a stepmother to his three children, actively participating in their upbringing, education, and general welfare until they reached the age of majority. She claims to have developed a strong familial bond with the Applicant and his extended family, considering herself a *de facto* member.

While she does not appear to have a legal or biological relationship with the Applicant, her long-term role as a cohabitant and stepmother to his children suggests a level of personal involvement akin to a familial connection. There is no evidence contradicting this claim

Business Association

[49] Ms. Joseph states that she has advised the Applicant on business matters, investments, and the expansion of his enterprises. She was granted **two** Powers of Attorney:

- **PA196/2023**, which gives her broad financial and managerial control over the Applicant's Bois Cotlette Estate.
- **PA4/2024**, which grants similar authority concerning Insight Inc.

[50] These documents confer substantial legal and financial control over the Applicant's assets, bank transactions, and property management. The extent of authority granted through the Powers of Attorney, coupled with her self-described role in business decision-making, strongly indicates that Ms. Joseph functions as a business associate of the Applicant. Her ability to transact on his behalf, manage finances, and oversee investments suggests a relationship of trust and influence in business matters. There is no evidence contradicting this claim

Capacity to Ensure Compliance with Bail Conditions

[51] Ms. Joseph pledges substantial assets, including properties valued at **\$2,325,000**, of which at least \$1,300,000.00 is unencumbered equity, to secure the Applicant's bail, demonstrating a significant financial commitment. She asserts that her longstanding relationship with the Applicant, both personally and professionally, grants her the influence necessary to ensure his compliance. She explicitly states that she understands her obligations as a surety, has assumed them voluntarily, and has not accepted compensation or indemnification, per Section 18 of the Bail Act. Her control over key financial and business matters, as well as her previous role in his personal life, is persuasive in demonstrating influence and a *significant* level of control over the Applicant.

[52] The evidence presented establishes that Rhoda Joseph is both a business associate and an individual of *similar stature* to a family member, based on her long-term cohabitation and involvement in the Applicant's personal and professional life. While she lacks a formal legal or biological familial connection, her financial entanglement with the Applicant and the broad authority granted to her through the Powers of Attorney support the claim that she wields substantial influence over the Applicant.

[53] In my view, this satisfies the threshold of "significant" control necessary to ensure the Applicant's compliance with bail conditions, and I so hold. Accordingly, Rhoda Joseph is approved as surety.

Does the transfer of ownership of the property intended to be used as security for bail constitute an act of indemnification of the surety, thereby violating Section 18 of the Bail Act?

[54] The grant of bail is regulated by statute in Dominica and section 18 of the Bail Act provides as follows:

"18. (1) Where a person -

(a) indemnifies another or agrees to indemnify another; or

(b) accepts a fee from another or agrees to accept a fee from another, against any liability which that other may incur as a surety to secure the surrender to custody of a defendant, he and that other person are guilty of an offence.

(2) An offence under subsection (1) is committed whether - (a) the agreement is made before or after the person to be indemnified becomes a surety; (b) the person becomes a surety or not; or (c) the agreement contemplates compensation in money or in money's worth."

The judicial authority on the offence of indemnifying a surety in bail proceedings is extremely limited; particularly post codification of the offence. The following cases provide some helpful insight as to the nature of this offence.

[55] In **Cripps v Hartnoll**. 4 B& S 415,122 Eng Reprints 514 (1863), dealing with an express promise of indemnity running from a third person, the father of the defendant, to the bail. The court held such a promise not within the Statute of Frauds, but was an original agreement. The case did not consider the public policy involved in such an agreement. Although Baron Pollock said." Here the bail was given in criminal proceedings and where bail is given in such a proceeding, there is no contract on the part of the person bailed to indemnify the person who became bail for him."

[56] In **Wilson V Strugnell**, a case referenced by the Respondent, The defendant Manners who was charged with embezzlement was released on bail posted by the defendant Strugnell.

Manners had paid Strugnell the amount of the bail as security. Later Manners defaulted and was later adjudged bankrupt. The trustee in bankruptcy brought an action to recover from Strugnell the indemnity paid to him by Manners. The court gave as its reason for allowing recovery, that a contract to indemnify bail was against public policy in that it deprived the public of the security of the bail.

[57] In **R v Porter**¹, the appellant and a man named Brindley, were indicted for conspiracy. The fifth count of the indictment alleged that in May 1909, a man named Clark was committed by the magistrates on a charge of felony that Clark was granted bail, and that the appellant and Brindley entered into recognisances on his behalf, each of them being bound in the sum of 50 pounds. The count charged against the appellant and Brindley alleged that they unlawfully did conspire together with Clark, while the charge against the latter was pending, that Clark should indemnify the appellant and Brindley against their liability on their recognisances which they had duly entered into as sureties for the appearance of Clark at the following Worcestershire Quarter Sessions. The jury found that the appellant and Brindley were parties to an agreement with Clark under which they were to receive 50 pounds each in respect of their giving bail for Clark, so that they would stand to lose nothing if Clark absconded before the trial.

[58] On appeal, it was argued that the conviction could not stand because the jury did not find that the appellant had entered into the agreement with intent to obstruct and pervert the course of justice, and because, failing such intent, the agreement is not illegal in itself in the sense of making the parties to it guilty of a criminal conspiracy. Lord Alverstone CJ held that:

“The learned judge rightly held that the appellant, by being a party to that agreement, was guilty of a criminal conspiracy, and that it was not necessary that it should be found that he had intended to pervert or obstruct the course of justice. The conviction, therefore, was a good conviction on the fifth count of the indictment, and the appeal must be dismissed.”

[59] In **Hermann v Jeuchner**², the plaintiff was ordered to find two sureties in 50l. each for his good behaviour for two years. Being unable to find more than one surety, the plaintiff was imprisoned in default. He then desired the defendant to become surety for him, but the defendant refused, unless the amount for which he was to become surety should be deposited with him for the

¹ [1910] 1 KB 369.

² (1885) 15 QBD 561.

space of two years. The plaintiff accordingly deposited with the defendant the sum of 49l., who thereupon became surety for the plaintiff and he was released. The plaintiff before the expiration of the two years brought an action to recover back the 49l. deposited with the defendant, and Stephen J. gave judgment for the plaintiff. The defendant appealed. In determining the legality of the agreement, Brett MR stated:

“To my mind it is illegal, because it takes away the protection which the law affords for securing the good behaviour of the plaintiff. When a man is ordered to find bail, and a surety becomes responsible for him, the surety is bound at his peril to see that his principal obeys the order of the Court: at least, this is the rule in the criminal law; but if money to the amount for which the surety is bound is deposited with him as an indemnity against any loss which he may sustain by reason of his principal's conduct, the surety has no interest in taking care that the condition of the recognisance is performed. Therefore the contract between the plaintiff and the defendant is tainted with illegality.”

[60] As evident from the age of these cases, much of the jurisprudence in this area of law predates the codification of the offence in the United Kingdom's 1976 Bail Act and, by extension, that of the Commonwealth of Dominica. However, a consistent principle emerging from these cases is that indemnifying a surety entails a deliberate act, agreement, or promise specifically intended to compensate the surety for assuming such a role. The mere transfer of ownership of property to a surety, which enhances their ability to fulfill the financial obligations associated with their recognisance, does not, in itself, constitute indemnification.

[61] In this case, no evidence has been presented beyond the mere fact of the property transfer, which was introduced by the proposed surety herself to suggest the existence of any agreement, promise, or similar arrangement. Furthermore, there is no evidence indicating an intention to subvert the course of justice or to facilitate the Applicant's absconding. In the circumstances, I find that the Memorandum of Transfer of property to the proposed surety, which serves to enhance her financial standing, does not constitute a violation of Section 18 of the Bail Act, 2020 of Dominica.

Disposition

[62] Paragraph 106(1) of the Judgment of the learned Judge and the Order after Judgment issued on the 26th of November 2024 is varied in terms that Ms. Rhoda Joseph is an approved surety as someone of similar stature to a family member or business associate with sufficient

influence in relation to the Applicant and capable of ensuring that the Applicant abides by the conditions of his bail.

[63] The surety must attend before the Registrar of the High Court to establish that she possess the sum required either in cash or by unencumbered land document in her own name, to secure bail as directed by the court.

[64] The Surety must demonstrate to the Registrar that the powers granted to Rhoda Joseph in the two Powers of Attorney—

- PA196/2023, which provides her with broad financial and managerial control over the Applicant's Bois Cotlette Estate, and
 - PA4/2024, which grants similar authority with respect to Insight Inc.
- are extended and irrevocable until the completion of the Applicant's trial.

[65] Paragraph 106(13) of the order after Judgment issued on the 26th of November 2024 is varied by deleting the said paragraph and substituting instead that the Applicant shall reside at an address to be notified to the court under seal, and shall not leave the Commonwealth of Dominica except with leave of the court;

[66] Paragraph 106(14) of the Judgment and order after Judgment issued on the 26th of November 2024 is varied by deleting the said paragraph and substituting instead that the Applicant shall report to the Roseau police station, once a week to sign in between 6am to 6pm.

[67] Paragraph 106(5)and (6) of the Judgment and order after Judgment issued on the 26th of November 2024, be and are hereby suspended until further order of the Court.

Justice V. Georgis Taylor-Alexander
High Court Judge

BY THE COURT

REGISTRAR