

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCVP2019/0035

BETWEEN:

[1] CLICO INTERNATIONAL LIFE INSURANCE LTD
[2] WILBUR HARRIGAN (As Administrator of Clico International
Life Insurance Ltd)

Applicants/Appellants

and

EAST CARIBBEAN BAPTIST MISSION

Respondent

CONSOLIDATED WITH ANUHCVP2010/0152

[1] CLICO INTERNATIONAL LIFE INSURANCE LTD
[2] WILBUR HARRIGAN (As Administrator of Clico International
Life Insurance Ltd)

Applicants/Appellants

and

JERIANNE GEORGE

Respondent

CONSOLIDATED WITH ANUHCVP2010/0203

[1] CLICO INTERNATIONAL LIFE INSURANCE LTD
[2] WILBUR HARRIGAN (As Administrator of Clico International
Life Insurance Ltd)

Applicants/Appellants

and

HENSWORTH JONAS

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis
The Hon. Mr. Eddy D. Ventose
The Hon. Mde. Esco L. Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Talia Da Costa for the applicants/appellants
Ms. Chantal Marchal for the respondents

2024: October 3.

Reasons for decision

Civil Appeal – Rule 62.15(3) Civil Procedure Rules (Revised Edition) 2023 (CPR) – Rule 62.14 (1) CPR – Application for an extension of time and relief from sanctions to file and serve record of appeal and skeleton arguments – Part 26 CPR – The Court’s case management powers – Factors taken into consideration in determining whether to grant an extension of time – Whether to grant an extension of time to the appellants to file and serve their record of appeal and skeleton arguments – What sanctions should be imposed for their default

REASONS FOR DECISION

- [1] **HENRY JA:** These are the written reasons for the Court’s oral decision delivered on 3rd October 2024 in which it granted the application by the appellants, CLICO International Life Insurance and its Administrator in Bankruptcy, Wilbur Harrigan, for an extension of time to file the record of appeal and skeleton arguments and awarded costs to the respondent to be assessed if not agreed. The respondents are the Eastern Caribbean Baptist Mission, Jerianne George and Hensworth Jonas. Their application for an order to strike out the appeal for want of prosecution which pre-dated the applicants’ application fell away in the circumstances. These reasons represent the collaborative effort of the members of the Court who presided at the hearing.

Background

- [2] Both applications were spawned by a notice of appeal filed on 19th November 2019 by the appellants against the judgment of the learned judge in which she made an order for the sale by public auction of land situated in the State of Antigua and Barbuda and registered in the name of Colonial Life Insurance Company (Trinidad) Limited as Registration Section: Sutherlands, Block and Parcel 64 1792B 153 (‘the subject land’). The learned judge directed that the proceeds of

the sale were to be applied to satisfy the judgments entered on 17th May 2010¹ in the respondents' favour and the associated legal costs. It is worth noting that the judgments were entered due to the first named appellant's default in filing acknowledgements of service. The second appellant was not a party to the proceedings at that time and was added only after the first appellant was placed under judicial management.

- [3] The respondents and the appellants have in their opposing affidavits² summarized the historical background to the dispute among them. The factual matrix is chronicled in the judgment of the learned judge. I borrow from that narrative to contextualize the underlying facts and issues.
- [4] The order for sale arose out of an application filed on 18th September 2017 by the respondents for leave to apply for an order to enforce their judgments by sale of the subject land. On 7th December 2017, the court granted them leave to file what would be their second such application.
- [5] The first application for an order of sale of the subject land was made on 26th March 2015, leave having been granted to do so on 27th February 2014. By then, the first appellant had been placed under judicial management³. It is worth noting that the respondents' first application for leave was filed on 25th January 2011, some 17 months before it was eventually determined.
- [6] Both applications for leave to apply for sale of the subject land were grounded in the respondents' assertions that the first appellant was the beneficial owner of the subject land. The respondents contended that in all the circumstances of the case including the first appellant's dealings with the subject land and the fact that the first appellant and the registered owner are related companies the court should pierce the corporate veil and find that the first appellant is the beneficial owner of the subject land.

¹ Pages 32 to 34 of the Supplemental Hearing Bundle filed on 26th September 2024.

² See affidavit of Hensworth Jonas filed on 15th August 2024 in support of the respondents' application to strike out the appeal; and the appellants' affidavit of Ikins Clarke filed in response on 20th September 2024.

³ On September 9th 2011.

- [7] When the first application came on for hearing, the learned judge directed that notice be given to the registered owner. The proceedings were adjourned to facilitate such service.
- [8] The first application for sale of the subject land was heard on 2nd July 2015. By order dated 17th August 2015, the learned judge declined to pierce the corporate veil or to declare that the first appellant is the beneficial owner of the subject land. He refused to make an order for its sale and he dismissed the application.
- [9] In a further attempt to reap the fruits of their default judgments, the respondents subsequently applied for an order for oral examination of the first appellant's court appointed administrator. Pursuant to section 61(4) of the **Insurance Act 2007**⁴, the learned judge granted them leave to apply for an order of oral examination. The oral examination was intended to elicit information regarding the rights, title to or interest of the first appellant in the subject land and other lands in the State of Antigua and Barbuda that were available to pay the judgment debts.
- [10] During the oral examination on 24th April 2017, the Judicial Manager Mr. Patrick Toppin testified *inter alia*:
- '... There is an investment property located at Sutherland Development in the name of Colonial Life Insurance [the first appellant]⁵. The last valuation at April 2013 reflects a valuation of \$1.9M. ... In the Books of CIL [the first appellant], the assets of Colonial Life have been included but are not registered to CIL [the first appellant]. They are still registered to Colonial Life. ...
- ... When the Barbados Company CIL was established, the intention was that that company would take over the operations of Colonial Life in Barbados and Eastern Caribbean. The transfer required the technical approval of Supervisors/Superintendents of Insurance in all of the jurisdictions. And so, although it was recognized that the fact that the transfer had not been approved is more of not really following through rather than a specific decision not to. During all that time CIL managed the operation as though it was its own. So the assets and liabilities of Colonial Life was part of the operations of CIL [the first appellant].'⁶

⁴ Act No. 13 of 2007 of the Laws of Antigua and Barbuda.

⁵ Mr. Toppin indicated that by CLI he meant CLICO Antigua who is the first appellant.

⁶ Extracted from paragraph 10 of the learned judge's judgment.

[11] In their second application for an order for sale of the subject property, the respondents relied substantially on Mr. Toppin's evidence. They enumerated five grounds on which the application was predicated. These included that:

(iv) Upon the oral examination in Court of Mr. Patrick Toppin, judicial manager of CLICO on the 24th day of April 2017, he confirmed that CLICO [the appellant] managed the property in question as though it was its own even though it is registered in the name of Colonial Life Insurance Company (Trinidad) Ltd. Mr. Toppin further stated that the assets and liabilities of Colonial Life Insurance Company (Trinidad) Ltd were part of the operations of the CLICO. The property was therefore treated as and is therefore an asset of CLICO.

(v) The Land is entirely and without restriction beneficially owned by CLICO.

(a) On the 7th day of December 2017, the Court granted leave for the Applicants to file this application for an order for sale application.

(a) The proposed sale is just and equitable in all of the circumstances. (Bold added)

[12] The second application was heard by a different judge. She noted that the issue before her was whether the corporate veil should be lifted in light of Mr. Toppin's testimony during the oral examination to the effect that 'in all the circumstances it has always been the position between Colonial Life Insurance (Trinidad) Limited and CLICO that Colonial Life Insurance (Trinidad) Limited was actually holding Parcel 153 for CLICO and a formal transfer was to be effected but for a certain turn of events.' She noted further that it was common ground that the appellant and Colonial Life Insurance (Trinidad) Limited are separate and distinct companies. The learned judge remarked that the legal principles that governed applications relating to lifting of the corporate veil were as established in **Salomon vSalomon & Co Ltd.**⁷

⁷ [1897] 1 AC 22.

[13] The learned judge held that the appellant is the beneficial owner of the subject property and determined that the evidence of the judicial managers justified the lifting of the corporate veil between the appellant and Colonial Life Insurance Company (Trinidad) Limited. In her words:

‘[22] ... if in all the circumstances the Judicial Manger, Mr. Toppin and before him, Mr. Thornhill hold the view that Parcel 153 is the property of CLICO, albeit at this stage, the beneficial owner, the Court could hold no less. It therefore appears to the Court that such being the Judicial Manager, Mr. Toppin's view, he could under a court's order take the necessary actions to settle any other debt aside or apart from that of ECBM, Mr. George and Mr. Jonas by sale of Parcel 153.

[23] On the evidence before the Court, the Court does not see why it should not lift the corporate veil under the instances of (b) and (c) above to find that CLICO is the beneficial and true owner of Parcel 153. The Court declares that it finds CLICO to be the beneficial and true owner of Parcel 153.

[24] The Court having declared CLICO to be the beneficial and true owner of Parcel 153, will grant ECBM, Ms. George and Mr. Jonas an order for sale of Parcel 153.’⁸

[14] Being dissatisfied with the learned judge's decision, the appellants filed their appeal. In the normal course of things, they were required by the **Civil Procedure Rules (Revised Edition) 2023 ('CPR')** rule 62.15(3) to file and serve the record of appeal within 42 days of receipt of the notice of availability of the transcript. **CPR** rule 62.14(1) stipulates that the appellant's skeleton arguments must be filed and served within 52 days of receipt of notice of the availability of the transcript.

[15] **CPR** 62.15(2) states that within 21 days of receipt of the notice under Rule 62.9(1)(a), (b) or (c) that the transcript is available, all parties must inform the appellant of the documents that they wish to have included in the Record or the Core Bundle. In view of the date notice was given to the appellant, the respondent should have sent those documents to the appellant on or before 3rd March 2022.

⁸ At paras. 23 – 24 of the judgment.

- [16] Notice of the availability of the transcripts of the notes of evidence ('notice of availability') was issued by the court office on 10th February 2022 and was posted on the E-Litigation Portal ('ELP') on 11th February 2022. Based on the date of notice given to the appellants, the record of appeal should have been filed on or before 25th March 2022. Similarly, they should have filed their skeleton argument on or before 4th April 2022. In violation of the prescribed filing timelines outlined in the **CPR** the appellants failed to file the record of appeal and skeleton arguments by the respective deadlines.
- [17] In purported compliance with **CPR** 62.15(2), the applicant via letter dated 9th November 2023⁹ provided the appellant with the documents the respondent wished to have included in the Record of Appeal. This was way after the 3rd March 2022 deadline.
- [18] On 13th November 2023, at a status hearing before the learned Deputy Chief Registrar, directions were given to the parties.¹⁰ The appellant was ordered to file and serve the record of appeal on or before 1st December 2023 and their written submissions with authorities on or before 8th December 2023. The respondents were directed to file and serve their written submissions with authorities on or before 8th January 2024. The appellants were at liberty to file and serve written submissions in reply with authorities on or before 23rd January 2024. The appeal was scheduled to be heard at the next sitting of the Court of Appeal in the week commencing 29th April 2024.
- [19] By email dated 7th December 2023, the respondents' legal practitioners re-sent to the appellants' legal practitioners the documents that they wished to have included in the record of appeal. The appellants did not file the record of appeal or their written submissions within the timelines set out in the order made by the Deputy Chief Registrar at the status hearing.

⁹ Pg. 97 and 98 of the Supplemental Hearing Bundle filed on September 26th 2024.

¹⁰ See Certificate of Result of Status Hearing at pg. 100 of the Hearing Bundle.

- [20] In preparation for the impending hearing of the appeal in April 2024, the matter was set down for case management before the Deputy Chief Registrar on 25th March 2024. Another legal practitioner held papers on behalf of the appellants' legal practitioner. It emerged during the hearing that yet again the appellants' legal practitioner on record had not complied with the filing deadlines. It was represented that this was due to personal challenges occasioned primarily by health issues. A medical certificate was submitted which indicated that learned counsel would be fit to resume work on 26th April 2024. The matter was adjourned to the next sitting of the Court of Appeal the week commencing on September 30th 2024.
- [21] The respondents filed their application to strike out the appeal for want of prosecution on 15th August 2024. The supporting affidavit was filed on even date having been sworn to by the third respondent Hensworth Jonas on behalf of all three respondents.
- [22] On 16th August 2024 Mr. Craig L. Jacas of Stapleton Chambers filed a Notice of Acting¹¹ signifying that he had been appointed to represent the first named appellant in place of the previous legal practitioner. On 23rd August 2024, the appellants filed a Notice of Opposition to the respondents' application to strike.
- [23] They filed their application for extension of time and relief from sanctions on 20th September 2024. An affidavit in response to the application to strike was filed on the same date. It was attested to by Mr. Ikins Clarke, Director of Deloitte Consulting Limited and he claimed to have been appointed as agent for the second appellant to among other that affidavit in support of their application.
- [24] Both the application to strike and the application for extension of time and relief from sanctions were set down for hearing on 3rd October 2024. Even though the application to strike was filed earlier, logic and good order dictated that the appellants' application be considered first and this was done.

¹¹ Pg. 109-110 of the Supplemental Hearing Bundle.

- [25] In his affidavit, Mr. Clarke averred that the second appellant was only recently made aware of the medical issues being encountered by its previous legal practitioner. He indicated that after the judgment being appealed against was rendered in the lower court, the second appellant gave instructions to its legal practitioner to appeal and to apply for a stay of execution of the same pending the appeal. This was done. The second appellant was advised by counsel that the next steps in the appeal involved awaiting the preparation of the transcript of the proceedings in the High Court and the filing and service of skeleton arguments by the parties, after which case management would take place around 21st to 25th February 2022.
- [26] Mr. Clarke averred further that no further correspondence was received from the legal practitioner. However, the second appellant was made to understand that the transcript had become available and the skeleton arguments had been filed. He averred further that since then no further communication has been received from the legal practitioner, although numerous attempts were made by the second appellant to contact her. He asserted that this lack of communication from their counsel led to the decision to terminate the relationship with her and consequently a new legal practitioner was retained.
- [27] Mr. Clarke indicated that it was only when the second appellant's new legal practitioner received a copy of the Application to Strike out the appeal and notice of the 18th August 2024 hearing that the appellants became aware of the previous hearings in the appeal. On learning of this development the appellants instructed their new legal practitioner to attend the hearing and respond to the application. As it turned out the matter was adjourned to September 23rd 2024.
- [28] Mr. Clarke stated that instructions were given to their newly appointed legal practitioner to contact the previous legal practitioner and request the case files related to these proceedings. This was done by letter on 18th April 2024 which was followed by emails dated 10th, 22nd, 28th May, June 6th and July 18th 2024.

An email response was received dated 18th September 2024. The several correspondences referenced by him were exhibited¹².

- [29] Also exhibited was a medical report of Dr. George Mansoor dated 17th September 2024, in which the medical practitioner explained that he had been treating the previous legal practitioner since May 2023 for a range of medical conditions including recurring dizziness, lethargy and nausea which have affected her daily routine and that require periods of rest to restore her usual functions. The doctor wrote that the patient was provided with a medical certificate in March 2024 due to her illness, with a recommendation to resume work at the end of April 2024. He noted that it was anticipated at the time that her condition may worsen at times while improving at other times.
- [30] The doctor averred that the patient traveled overseas between April and May 2024 for further medical review and since her return, has experienced an escalation of the medical conditions and challenges as a result of which she traveled abroad again in August 2024 with an anticipated return to the State in October 2024. He opined that the symptoms described have been incapacitating the patient and have prevented her from undertaking her usual workload and other functions for periods of time and have impacted her quality of life.
- [31] According to Mr. Clarke, in the absence of communication from the previous legal practitioner, the second appellant's ability to respond to the strike out application was limited because they were unaware of her reasons for failing to diligently prosecute the appeal. They obtained information about her medical challenges only through the 18th September 2024 emailed response. He asserted that before that the last update received from her about the status of the appeal was on 21st December 2021. He exhibited a copy of that email. He acknowledged that no application for extension of time was made earlier. He attributed this to the fact that the appellants were not aware of their non-

¹² Pages 265 to 275 of the Supplemental Hearing Bundle.

compliance with the court's order until their new legal practitioner gained access to the E-litigation portal.

[32] Mr. Clarke admitted that there has been delay in the prosecution of the appeal but he denied that the appellants were in any way responsible for the delay. He maintained that they were not notified of the 13th November 2023 status hearing or the 25th March 2024 case management conference nor the outcome of either hearing. He stated that the appellants took all necessary steps to bring the appeal to a state of readiness within a reasonable timeframe.

[33] Regarding the prospects of the appeal, Mr. Clarke averred that he has been advised by the appellants' legal practitioner and believes that the impugned judgment is incorrect in law because the learned judge placed too much weight on Mr. Patrick Toppin's testimony and misdirected herself by failing to apply the applicable legal principles with respect to the lifting of the corporate veil. He added that he is further advised and believes that the appeal has a strong chance of success. He asserted that denial of the application would occasion undue prejudice to the appellants and to the registered owner of the subject property.

[34] The respondents strenuously opposed the application for extension of time and relief from sanctions. They contended that the appellants' delay in filing the record of appeal and skeleton arguments has been inexcusably inordinate; further, that they have advanced no reasonable justification for such delay and that their chances of success on appeal are slim. They argued that they have been denied the fruits of their judgments for over 14 years which is very prejudicial to them and contrary to the interests of justice.

Issues

- [35] The issues before the court were twofold:
- a) whether to grant an extension of time to the appellants to file their record of appeal and skeleton arguments; and
 - b) if so, what if any sanctions should be imposed for their default.

Extension of Time

[36] The Court took time to consider the foregoing factual background, the written and oral submissions advanced by the applicants/appellants and the respondents. The relevant procedural rules set out in the CPR and the applicable legal principles were also taken into account.

[37] **CPR 26.1(2) (k)** empowers the Court to grant an extension of time to a litigant even if an application for such relief is made after the deadline for compliance with a rule or court order. It provides expressly:

“(2) Except where these rules provide otherwise, the court may

(a...

(k) **extend or shorten the time for compliance with any rule, practice direction, order or direction of the court** even if the application for an extension is made after the time for compliance has passed;” **(Emphasis added)**

[38] The factors that must be considered in determining whether to grant an extension of time to file a record of appeal or other process are settled and are set out in several decisions of this Court including **John Cecil Rose v Anne Marie Uralis Rose**.¹³ They are (1) the length of the delay; (2) the reasons for the delay; (3) the merits of the appeal; and (4) the prejudice to the litigants and all relevant surrounding circumstances. In exercising its discretion to either grant or deny an application for extension of time, the Court must also act judicially and have regard to the overriding objective of the **CPR** to do justice between the parties. Each relevant factor was examined in turn.

Length of delay

[39] As regards the length of delay, it is now established and accepted that an inordinate delay in meeting a stipulated filing deadline may be fatal to an applicant who subsequently seeks an extension of time to do so. The respondents have invited the Court to calculate the period of delay from 24th March 2022¹⁴ (in respect of the record of appeal) and from 3rd April 2022 (in relation to the skeleton arguments) which would amount to a delay of

¹³ SLUHCVP 2003/019 , (delivered 22nd September 2003); see also SKNHCVAP 2011/009 (delivered 14th October 2011, unreported) and BVIHCVP 2011/040 (delivered 23rd July 2012, unreported).

¹⁴ Being 42 days after 11th February 2022 when the Notice of availability was uploaded to the ELP.

approximately two years and five months. They relied on a dictum from **First Domestic Insurance Co. et al v Industrial Enterprises Ltd.** where, in articulating the reasons for the court's decision to strike out an appeal for want of prosecution by reason of the appellant's failure to file the record of appeal and skeleton arguments, Blenman JA said:

‘On the question of delay, the submissions advanced by Mrs. Felix-Evans were more attractive and persuasive, that in determining whether or not the delay was inordinate the Court must look at the entire period of time from the date of the notice of availability of the transcript. ...’¹⁵

[40] For their part, the appellants argued that the material period started when the learned Deputy Chief Registrar issued directions at the status hearing on 13th November 2023, so that the new deadlines for filing the record of appeal and skeleton arguments replaced those fixed in the **CPR**. Accordingly, the length of delay in each case was roughly 10 months as at the hearing date. At first they denied but later conceded that this was an inordinate delay.

[41] The Court is satisfied that the correct position is that the length of the delay is to be reckoned from the deadline set by the learned Deputy Chief Registrar on 13th October 2023 when she revised the timelines prescribed by the **CPR** extending the period for the filing of the skeleton arguments with no recorded objection from either side and not from February 2022 when the notice of availability of the transcript was issued by the court office. The posture adopted by the Court in the case of **First Domestic Insurance Co.** is distinguishable from what obtained in the instant case because in the former, the statutory deadlines were not varied by order of court and no variations were otherwise legitimately obtained so as to shift those timelines as happened in this case. Moreover, the appellant in that case had made no application for extension of time to file the record of appeal and the skeleton arguments. In the final analysis, this Court agrees that relevant period delay is 10 months. The Court is further satisfied that the period of delay is inordinate however an equally critical question is whether the delay is excusable.

¹⁵ DOMHCVAP 2014/0024 (delivered 27th May 2020, unreported), para 48.

Reasons for delay

- [42] The appellants attributed the delay to three main causes – illness of their legal practitioner; failure of the legal practitioner to notify them of the ongoing non-compliance with the filing deadlines; and the difficulties encountered by their new legal practitioner in accessing the electronic portal (and by extension the cases files) which resulted in an inability to complete their filings within a reasonable time after the notice of acting was filed in August 2024.
- [43] Usually illness of a legal practitioner without more would not necessarily constitute a good reason for a protracted delay in the filing of the record of appeal and skeleton arguments, for the simple reason that another legal practitioner may be engaged to prepare and file the documents. There must be something more substantial that would move the Court to grant an extension of time. All of the circumstances must be examined in the round in determining whether the illness in combination with other reasons constitutes a reasonable explanation for the inaction.
- [44] The fact that the appellants were unaware of their non-compliance with the court ordered deadlines would likewise not by itself afford a reasonable justification for non-compliance with the court order. It is trite law that litigants have a duty to take all reasonable steps and be proactive in obtaining information about how their case is progressing and to ensure that it is prosecuted expeditiously. In view of Mr. Clarke's account that the appellants had received no correspondence from their legal practitioner since 2021, it may appear that they could justifiably be accused of dropping the ball in this regard, but for his averment that they subsequently received confirmation from their counsel in 2023 that the skeleton arguments had been filed.
- [45] The Court was satisfied with Mr. Clarke's evidence that the appellants made several attempts to obtain updates from their legal practitioner about the progression of the appeal and were satisfied that it was proceeding apace, until August 2024 when they became aware for the first time of their non-compliance with mandatory timelines and of the application to strike out the appeal. Their engagement of new counsel in August 2024 signaled that once they became

aware of the default, they lost no time in seeking to address the delay. However, despite their efforts, they faced another hurdle yet again - that of accessing the case files.

- [46] From the evidence, it is clear and the Court accepted that the appellants were encumbered with a series of obstacles that were not of their making which precluded them from appreciating before August 2024 that the deadlines for filing the record of appeal and skeleton arguments had not been met in December 2023 or since then. To compound these problems, they had to wait until September 2024 before they could access the ELP and were in no position to complete the filing of the record of appeal and skeleton argument before their application for extension of time was heard and determined. It is evident that the appellants' non-compliance with the filing deadlines was not caused by lack of diligence by either them or their counsel now on record. We were satisfied that the three reasons for the delay when taken together afforded a good explanation for the delay.

Merits of the Appeal
Appellants' submissions

- [47] Turning next to the merits of appeal, the Court noted that the appellants articulated 12 grounds of appeal against findings of fact and law by the learned judge. Their primary contention in respect of the impugned errors of law are that the learned judge erred by not considering a) the legal principles as to how a beneficial interest in land is created and b) the legal principles that must be engaged in deciding whether to lift the corporate veil. In this regard, grounds of appeal (iii) and (viii) state respectively:

- '(iii) In determining the beneficial ownership of parcel 153, the learned judge was obliged to look beyond the evidence of Mr. Toppin and to apply the legal principles which determine whether a beneficial interest in land exists; in relying solely on her finding that it was Mr. Toppin's view that the land was beneficially owned by Clico, the learned trial judge erred in law.
- (viii) The learned trial judge erred in law when she found that the sole issue for determination was lifting the corporate veil and in so finding failed to consider any other principles of law applicable to the case;'

[48] Essentially, the appellants submitted that the decision appealed on the basis that in arriving at her decision; the learned Judge erred by placing too much weight on Mr. Patrick Toppin's evidence and misdirected herself by failing to apply the relevant legal principles applicable to lifting the corporate veil and the well settled equitable principles applicable to determining beneficial ownership. In support, they cited **Prest v Petrodel Resources Limited and others** where it was pointed out that:

‘... there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The Court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil.’¹⁶

[49] The appellants submitted that in view of the ratio decidendi in **Prest** the Court can only lift the corporate veil in limited circumstances, wherein a defendant can establish an existing legal obligation or liability which the claimant deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. They argued that there was no evidence before the Court below to adequately satisfy this requirement. In making a determination of whether the property is beneficially owned by the Appellant, the learned Judge ought to have considered the circumstances under which the property was acquired, to determine whether the property was being held on trust for the benefit of the appellant. They cited further **Doubloon International Limited v Bank of Saint Lucia Limited**¹⁷ in which the principles in **Prest** were applied by the Court.

[50] The appellants contended that the learned Judge misdirected herself in failing to apply those legal principles correctly in coming to her decision. This they

¹⁶ [2013] UKSC 34.

¹⁷ SLUHCV 2011/0821(delivered 15th May 2014, unreported).

submitted, was a fundamental error in principle which affords them a solid legal basis on which to appeal the learned judge's decision and which demonstrates that they have a strong prospect of success on the related grounds of appeal.

Respondents' submissions

- [51] The respondents countered that on careful examination of the Notice of Appeal, it reveals that the appeal is concerned primarily with challenging the learned Judge's findings that factual circumstances existed that would permit the Court to lift the corporate veil and find that the first appellant was and is the beneficial owner of the subject land. They submitted that for this reason the prospects of success on appeal are weak.
- [52] The respondents contended that there was clear incontrovertible evidence that Colonial Life Insurance Company (Trinidad) was merely an agent or alter ego of its controllers, and there was at the material time no real separation between the Colonial Life Insurance Company (Trinidad) and the first appellant. The general approach taken in English law to piercing the corporate veil is that it is permissible in specific situations to prevent abuse of the corporate form. Like the appellants, they relied on **Prest** and argued that piercing the corporate veil is a limited doctrine that should be applied in cases where it is necessary to prevent the controllers of a company from taking unconscionable advantage of the corporate structure.
- [53] The respondents argued that it is settled that an appellate court has limited role in disturbing findings of fact by a lower court and would do so only if satisfied that the findings are not supported by the evidence and the learned judge was plainly wrong. On the strength of **First Domestic Insurance Co.**¹⁸, they submitted that even if the points of law raised by the appeal are meritorious and evince a realistic prospect of success that is not enough to move the court to exercise its discretion to grant an extension of time to file the record of appeal and skeleton arguments, because this is just one of the factors which is to be considered and is not by itself determinative of the issue.

¹⁸ At para 61.

[54] It is trite law that an appellate court's primary function is one of review. It will therefore not interfere lightly with a trial judge's findings of fact unless it is satisfied that the lower court erred in principle and was made a blatantly wrong determination.¹⁹ Having considered the main grounds of appeal, we recognize that the appellants would have a heavy burden to show that the learned trial judge erred in her factual conclusions in respect of the evidence before her. In relation thereto the grounds of appeal against findings of fact have little chance of success.

[55] However, we noted that the two main legal challenges mounted by the appellants in their appeal (i.e. whether the learned judge erred in law by holding that the first appellant is the beneficial owner of the subject property and whether she erred by holding that it was appropriate to lift the corporate veil) raise weighty legal issues which impinge on the rights of a third party. The Court was prepared to accept preliminarily, without holding an entrenched position, that those grounds of appeal (which incidentally are linked by a common thread to the others) have a realistic prospect of success. The Court remained mindful that this assessment is just one of the factors to be considered. It must be factored into the mix along with all of the other relevant circumstances and does not by itself justify granting the application.

Prejudice

[56] In our view, if the application for extension of time is granted there will be prejudice to the respondents as they will continue to be denied the benefit of the default judgments they obtained on 17th May 2017, over 14 years ago. On the other hand, if the application is refused, the appellants would be denied the opportunity to present their appeal and potentially demonstrate that the impugned judgment was plainly wrong. Moreover, given the pending order for sale of the subject property, it is likely that Colonial Life Insurance Company (Trinidad) would be deprived of all title, rights and interest it has to the subject land. In our estimation, the prejudice to the appellants and Colonial Life Insurance Company (Trinidad) outweighs the prejudice to the respondents.

¹⁹ See ANUHCVP 2015/0029 (delivered 13th March 2019, unreported).

[57] Taking all of the circumstances into account and balancing all of the factors, the Court was satisfied that the interest of justice favoured the grant of extension of time to the appellants to file their record of appeal and skeleton arguments. Mindful of the vintage of this matter, the Court was of the considered opinion that consequential directions should be issued to ensure the expeditious determination of the underlying appeal.

Relief from Sanctions

[58] It is well established that a litigant will not attract sanctions for non-compliance with a direction or order unless a specific sanction is stipulated in the direction or order.²⁰ The order of the learned Deputy Chief Registrar dated 13th November 2023 did not contain a sanction for non-compliance with the filing timelines. Accordingly, no sanctions may be visited on the appellants for their default. Consequently, the Court did not need to consider that aspect of the application.

[59] Based on the foregoing, and considering all the above-mentioned factors, in particular the reasons for the delay and the merits of the appeal, the appellants' application filed on 20th September 2024 for an extension of time to file the record of appeal and skeleton arguments was granted. The new timeline for filing both the record of appeal and skeleton arguments was set to 18th October 2024. Non-compliance with filing by that deadline now attracts the strike out sanction with costs of the appeal to the respondents.

²⁰ [2011] UKPC 38.

[60] We wish to express our gratitude to counsel on both sides for their written and oral submissions.

I concur.

Vicki Ann Ellis
Justice of Appeal

I concur.

Eddy D. Ventose
Justice of Appeal

By The Court

Chief Registrar