

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2023/0220

BETWEEN:

YULIA MOTLOKHOV

Claimant/Applicant

-and-

**[1] THE PORT MANAGER OF THE PORT AUTHORITY OF
ANTIGUA AND BARBUDA**

**[2] THE DIRECTOR OF THE ANTIGUA AND BARBUDA
DEPARTMENT OF MARINE SERVICES AND MERCHANT
SHIPPING**

[3] ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Defendants/Respondents

[1] FLYING DUTCHMAN OVERSEAS LIMITED

(A Company Incorporated in the Territory of the Virgin Islands)

[2] VITA FELICE LIMITED

(A Company Incorporated in the Territory of the Virgin Islands)

Interested Parties

Appearances:

Mr. Richard Wilson KC with Dr. David Dorsett and Ms. Carlitta Benjamin for the
Claimant/Applicant

Mr. Anthony Astaphan SC with Mrs. Carla Brookes-Harris, Ms. Joy Dublin and Ms.
Rose-Ann Kim for the Defendants/Respondents

Mr. Thomas Roe KC and Mr. Andrew O'Kola for the Interested Parties

2026: March 30; April 20 ,
May 15.

RULING
(FRESH EVIDENCE AFTER TRIAL)

- [1] **WILLIAMS, J.:** This is an application by the Claimant Yulia Gurieva-Motlokhov to
adduce fresh evidence after trial of this matter. The application arises after the trial of

the substantive claim had concluded and judgment reserved. The claim concerns allegations that the seizure and subsequent sale of the superyacht M/Y Alfa Nero by the Defendants was unconstitutional. The fresh evidence is said to have been obtained subsequent trial through discovery proceedings brought in the United States against Northrop & Johnson, the yacht brokerage firm involved in the sale process.

- [2] Firstly, the Claimant seeks to admit a previously undisclosed Alfa Nero Condition and Valuation Survey Report dated 19th April 2023. The Claimant relies on this evidence to allege that the vessel was in a much a better condition than alleged by the Defendants when seized in April 2023.
- [3] Secondly, the Claimant seeks to rely on various documentation including emails, company records, payment information and a newspaper report. The allegation is that a commission of US\$450,000.00 was paid by Northrop & Johnson to Mr. Johann Hesse who at time held an ambassadorial position in the Government of Antigua and Barbuda. The allegation is that the commission was paid to Mr. Hesse through a United Kingdom company-Caribbean Lifestyle Services Ltd. of which one Mr. Rufus Gobat is a director and shareholder. The Claimant submits that this evidence demonstrates that the M/Y Alfa Nero was seized and sold for an improper purpose namely financial gain.

Notice of Application

- [4] The Amended Notice of Application filed on 9th March 2026 seeks the following:
1. The Applicant be granted permission to adduce the fresh evidence as described in paragraph 8 of her affidavit dated 30 January 2026 and paragraph 6 of her affidavit dated 26 February 2026 (the “**Fresh Evidence**”).
 2. The Fresh Evidence be admitted into evidence in the proceedings.
 3. The Court shall consider the Fresh Evidence when determining the issues and delivering judgment.
 4. The Respondents shall pay the costs of the application.
 5. Any other order the Court considers to be appropriate.
- [5] The Notice of Application does not list the grounds of application but instead states as follows:

“The Applicant seeks the admission of the documents described at paragraph 8 of her affidavit dated 30 January 2026 and paragraph 6 of her affidavit dated 26 February 2026, which the Applicant considers are necessary to dispose fairly of her claim, for the reasons detailed in paragraphs 8 to 52 of the Affidavit of Yulia Gurieva-Motlokhov dated 30 January 2026.”

- [6] Before going further, the Court must point out that the practice employed by counsel for the Claimant in drafting the Notice of Application is contrary to the **Civil Procedure Rules (Revised Edition) 2023**. In this regard **CPR 11.7(1)** provides:

“11.7 (1) An application must state –

- (a) briefly, the grounds on which the applicant is seeking the order; and
- (b) what order the applicant is seeking.”

- [7] Thus, the grounds of application must be contained in the Notice of Application itself and not in the supporting affidavit. In the Court of Appeal decision of **Beach Properties Barbuda Ltd. v. Laurus Master Fund Ltd.** Barrow JA decried this practice as follows:

“This is a completely unacceptable practice. It is an abuse of the process of the court that should attract condign consequences. One objective of requiring that the application must state its grounds is to focus the thinking of lawyers. By being required to identify the grounds for making an application, before making it, lawyers are required to consider the merits of the application. A lawyer who has difficulty in formulating grounds for making an application has reason for thinking that perhaps it is because there are no grounds. The requirement of stating grounds also serves to clarify for the judge and the opposing party the basis on which the applicant claims to be entitled to the order sought. When an application states no grounds, it raises the suspicion that the application may be groundless, not just in form, but also in substance. That suspicion is heightened in a case such as this in which the failure to state grounds was deliberate: the section of the form requiring grounds to be stated was not simply overlooked. By telling the court to find the grounds in the affidavits the drafter revealed a clear advertence to the requirement of stating the grounds of the application and a conscious decision not to comply with the requirement. But even if it had been a case of laziness and not obfuscation that would have been a difference only of degrees. Failure to state the grounds of an application because it is too much trouble for the lawyer to do so is still very much an abuse of process.”¹

¹ Civil Appeal No.2 of 2007 decision dated 17th September, 2007 at para. 19 (unreported)

- [8] The non-compliance with CPR 11.7(1) in this instance has made it difficult for this Court to ascertain the exact grounds upon which the Claimant seeks to admit fresh evidence. In addition, the Court had to look through the affidavit to identify the fresh evidence itself. This non-compliance has fortunately been mitigated by the helpful written submissions of the parties. However, it will be taken into account when the costs of this application are being considered.

The Evidence

- [9] As far as can be ascertained from the Claimant's affidavits, the fresh evidence to be admitted is as follows:

1. Central Agency Agreement between the Government of Antigua and Barbuda and Northrop & Johnson dated 27 March 2024;
2. Alfa Nero Condition and Valuation Survey Report dated 19 April 2023;
3. Email from Richard Higgins to Vuslat Ubogu timed at 14:07 on 17 June 2024 ("Email 1");
4. Email from Richard Higgins to Cromwell Littlejohn timed at 15:10 on 3 July 2024 ("Email 2");
5. Email from Richard Higgins to Cromwell Littlejohn and others timed at 13:32 on 8 July 2024 ("Email 3");
6. "Payment Information" dated 24 July 2024 (the "Payment Information") to a UK company called Caribbean Lifestyle Services Limited ("**CLS**") with the reference "*Alfa Nero-170724*".
7. Documents relating to CLS held at Companies House in the UK, which show that since the incorporation of Caribbean Lifestyle Services Limited CLS on 3 April 2024 showing that Mr. Gobat has been a shareholder.

8. Report published in the *Antigua Observer* on 18 February 2026 which states that Mr Hesse has been relieved of his duties as the Ambassador to the African Union.

Defendants' Opposition

[10] The Defendants oppose the application on the following grounds which are summarized as follows:

1. **Lack of Proprietary Interest:** The Claimant has no proprietary rights or interest in the vessel, therefore the application for further evidence should be denied.
2. **Undue Delay:** Although the Claimant was aware of the broker's identity in July 2024, she waited eight months until March 2025 to file the disclosure application. This delay occurred despite the trial being set and judgment being reserved in November 2024.
3. **Breach of Finality and Prejudice:** This delay is contrary to the principle of finality and has caused prejudice to the Defendants by further delaying a final judgment in the matter.
4. **Irrelevance to Substantive Issues:** The documents provided by the Claimant are not relevant to the substantive constitutional or legal issues the High Court must determine.
5. **Basis for Seizure and Legislation:** The Survey Report was not used to determine the vessel's condition, the need for seizure, or the passage of the **Port Authority (Amendment) Act 2023**. Instead, the Defendants relied on disclosed captain's reports and supporting documents.
6. **Misrepresentation of Valuation:** The Claimant misconstrues the Valuation Survey Report's market sale figure of USD 105 million, which

was strictly conditional upon the vessel being fully manned, operational, and free of legal and financial encumbrances.

7. **Actual Vessel Condition:** At the material times of seizure and sale, the vessel was not fully manned or operational. The survey also noted a forced sale figure of USD 60 million.
8. **Invalidity of Unsigned Documents:** The unsigned document mentioned in the Affidavit is not a valid agreement, as it lacks signatures.
9. **Irrelevance of Broker Commissions:** Emails regarding commissions paid by the broker to third parties are irrelevant to the issues currently before the court.

[11] As previously noted, the Claimant has failed to include grounds in the Notice of Application but has instead referred the Court to paragraphs 8 to 52 of the affidavit in support. The court does not propose to attempt to summarize these extensive paragraphs. It suffices to state however, that the Claimant alleges that she only came into possession of the fresh evidence after trial had concluded and only through proceedings brought in the United States of America.

Procedural History

[12] It is only necessary to briefly outline how this matter has progressed to this point:

1. The claim was filed on 15th June 2023;
2. An application for injunctive relief preventing the sale of the vessel was dismissed on 29th June 2023 and this decision was later upheld by the Court of Appeal.
3. Decisions on applications for Appointment of a Yacht Surveyor, Specific Disclosure and an Application to strike out the affidavit of Paul Reichler were delivered in June 2024. The Application for Specific Disclosure was granted in part.

4. The Alfa Nero vessel was sold sometime in July 2024.
5. The Court of Appeal by order made on 20th August 2024 allowed an appeal in part and ordered further disclosure by the Defendants.
6. Trial of the claim took place from 19th to 22nd November 2024 and judgment was reserved.
7. By letter dated 13th January 2026 the Registrar of the High Court informed that judgment would be delivered during the week of 10th February 2026.
8. The instant application was filed on 2nd February 2026 and later amended.

Discussion

- [13] The parties do not dispute that the Court has the jurisdiction to allow further evidence to be adduced even though trial of the matter has already taken place. **Halsbury's Laws of England** confirms this power in the following terms:

“The power of a judge to review his own judgment before the drawing up of the order includes a discretion to permit the amendment of statements of case, even if that involves the putting forward of a new argument or the adducing of further evidence...”²

- [14] In **Charlesworth v. Relay Roads Ltd. (In Liquidation)** Neuberger J. outlined the general principle as follows:

“As is so often the case where a party applies to amend a pleading or to call evidence for which permission is needed, the justice of the case can be said to involve two competing factors. The first factor is that it is desirable that every point which a party reasonably wants to put forward in the proceedings is aired: a party prevented from advancing evidence and/or argument on a point (other than a hopeless one) will understandably feel that an injustice has been perpetrated on him, at least if he loses and has reason to believe that he may have won if he had been allowed to plead, call evidence on, and/or argue the point. Particularly where the other party can be compensated in costs for any damage suffered as a result of a late application being granted, there is obviously a powerful case to be made out that justice indicates that the amendment should be permitted.”³

² Halsbury's Laws of England volume 12A (2020) para.1209. Drawing up and filing of judgments and orders

³ [1999] All ER 397,401

[15] Neuberger J. outlined the second factor as follows:

“On the other hand, even where, in purely financial terms, the other party be said to be compensated for a late amendment or late evidence by an appropriate award of costs, it can often be unfair in terms of the strain of litigation, legitimate expectation, the efficient conduct of the case in question, and the interests of other litigants whose cases are waiting to be heard, if such an application succeeds.”⁴

[16] It can therefore be said that the exercise of this discretion involves balancing fairness on one hand and finality of litigation on the other. This discretion is not exercised in a vacuum and in **Charlesworth v. Relay Roads Ltd.** the court outlined various factors to be taken into account. These are as follows:

“In these circumstances, I conclude that the following principles apply where a party is seeking to call fresh evidence on a new point after judgment has been given but before the order has been drawn up.

(1) The court has jurisdiction to grant an application to amend the pleadings to raise new points and/or to call fresh evidence and/or to hear fresh argument.

(2) The court must clearly exercise its discretion in relation to such an application in a way best designed to achieve justice.

(3) The general rules relating to amendment apply so that: (a) while it is no doubt desirable in general that litigants should be permitted to take any reasonably arguable point, it should by no means be assumed that the court will accede to an application merely because the other party can, in financial terms, be compensated in costs; (b) as with any other application for leave to amend, consideration must be given to anxieties and legitimate expectations of the other party, the efficient conduct of litigation, and the inconvenience caused to other litigants.

(4) Quite apart from, and over and above, those principles, because it is inherently contrary to the public interest and unfair on the other side that an unsuccessful party should be able to raise new points or call fresh evidence after a full and final judgment has been given against him, it would generally require an exceptional case before the court was prepared to accede to an application where the applicant could not satisfy the three requirements in *Ladd v Marshall*.

⁴ [1999] All ER 397,405

(5) Almost inevitably, each case will have particular features which the court will think it right to take into account when deciding how to dispose of the application before it.

(6) The court should be astute to discourage applications which involve parties seeking to put in late evidence, but cases where new evidence is found after judgment is given and before the order is drawn up will be comparatively rare.”⁵

[17] In **Charlesworth v. Relay Roads** the court referred to the well-known case of **Ladd v. Marshall**⁶ which established the test for admission of fresh evidence on appeal. **Ladd v. Marshall** has also been referred to by the parties in their written and oral submissions. The Court accepts as a matter of principle that the **Ladd v. Marshall** criteria apply to the reception of evidence after trial but before judgment has been delivered, but with less rigour than on appeal.⁷

[18] The **Ladd v. Marshall** criteria for the admission of fresh evidence are as follows:

1. The evidence could not have been obtained for use at trial with reasonable diligence.
2. The evidence would probably have an important influence on the result of the case, though it need not be decisive.
3. The evidence should be credible though it need not be incontrovertible.

[19] Finally, the Court is required to take the Overriding Objective of the **Civil Procedure Rules (Revised Edition) 2023** into account. **CPR 1.1(1)** mandates the court to deal with cases justly. CPR 1.1(2) defines dealing with cases justly as follows:

“(2) Dealing justly with the case includes –

- (a) ensuring, so far as is practicable, that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with cases in ways which are proportionate to the –
 - (i) amount of money involved;

⁵ [2000] 1 WLR 230. Judgment Dated 20th July, 1999

⁶ [1954] 1 WLR 1489

⁷ See: *Fisher v Cadman* (2005) EWHC 2424(CH)

- (ii) importance of the case;
- (iii) complexity of the issues; and
- (iv) financial position of each party;
- (d) ensuring that it is dealt with expeditiously; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

Whether the evidence could have been obtained with reasonable diligence for use at trial?

- [20] In her affidavit in support, the Claimant describes that on 11th March 2025 she instructed counsel in the United States of America to file an application for discovery in the Southern District Court of Florida. The application was directed at the yacht brokerage firm Northrop & Johnson Yachts-Ships LLC (Northrop & Johnson) to compel the production of sale records for the sale of the *Alfa Nero* as well as associated communications and financial transfer information. On 17th July 2025 the Southern District Court of Florida granted the discovery order. According to the Claimant, disclosure was obtained from Northrop & Johnson between 16th September 2025 and 20th October 2025 including the documents which she now seeks to admit as fresh evidence.
- [21] The Claimant submits that the fresh evidence could not, with reasonable diligence have been obtained prior to the trial. This is as the evidence was located in the United States of America and could only have been obtained through specialist discovery proceedings. It should be remembered that the trial of this matter took place between the 19th to 22nd November, 2024.
- [22] In response, the Defendants argue that the identity of the broker Northrop & Johnson was known to the Claimant since July 2024. Thus, they submit that the application could have been made earlier in order to have the documents available for trial. The Claimant however points out that based on the time it took to obtain the order for discovery (over

four months) the documents could not have been received before trial even if the application had been made sooner.

[23] I am inclined to agree with the Claimant on this issue. Apart from the four months which it took to obtain the order for discovery it took another three months (up to October 2025) to complete the process as documents were provided by Northrop & Johnson on a rolling basis. In fact, the Claimant's affidavit in support of the application points out that the process might still not be fully complete as some documents are missing. In addition, I agree that a further reasonable period must be taken into account to allow for the Claimant's attorneys to examine the documents which they received from Northrop & Johnson.

[24] Therefore, taking the entire sequence of events into consideration, I find that the Claimant could not have with reasonable diligence obtained the fresh evidence before trial. Although, there was some delay between October 2025 and February 2026 when this application was filed, this delay is not sufficient to refuse the application. Accordingly, the Claimant has satisfied the first limb of the **Ladd v. Marshall** criteria.

The evidence would probably have an important influence on the result of the case, though it need not be decisive.

[25] The Court will address this aspect of the application by considering each item of evidence the Claimant seeks to adduce. Before doing so, it is necessary to identify the central issues in the substantive claim. As judgment on the substantive claim has not yet been delivered, those issues will of necessity be outlined only briefly.

[26] The substantive issues which are relevant to the present application are as follows:

1. The Claimant alleges that she has a proprietary interest in the vessel.

2. The vessel was seized and sold pursuant to the provisions of the **Port Authority (Amendment) Act** on the statutory basis that “the vessel:
 - a. is not being maintained by the owner or an agent for the owner;
 - b. ownership of the vessel has been unclaimed for a period in excess of 90 days;
 - c. has outstanding moorage fees and docking charges;
 - d. is uninsured;
 - e. is or is likely to become unseaworthy;
 - f. poses a threat to the environment, the health and safety of persons using the harbour and to the safety and security of other vessels in the harbour.⁸
3. The Claimant alleges that no compensation was paid to her in contravention of **section 9(1)** of the **Constitution of Antigua and Barbuda**.
4. The Defendants rely on **section 9(4)** of the Constitution which provides an exception to **section 9(1)** of the Constitution “in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants.” In order to succeed on this ground, the Defendants must satisfy the Court that the measures taken were reasonably justifiable in a democratic society. This will also require consideration of issues of proportionality.⁹

⁸ Gazette Notice dated 21st March 2023, Section 3 Port Authority (Amendment) Act No.1 of 2023

⁹ See: *De Freitas v. Permanent Secretary of Ministry of Agriculture* [1999] 1 AC 69(PC), *Bank Mellat v. Her Majesty's Treasury* [2013] UKSC 39 at paragraph 20 per Lord Sumption

5. The Defendants through one of its witnesses the Port Manager Mr. Darwin Telemaque gave evidence that at the date of its seizure the vessel had not been adequately maintained, was only manned by a skeleton crew and was uninsured. The Defendants submitted that if left in this condition it would pose a risk to the sensitive ecosystem of Falmouth Harbour.¹⁰

The Evidence Generally

- [27] The Claimant classifies the proposed fresh evidence into two broad categories: first, “the Survey,” namely the Alfa Nero Condition and Valuation Survey Report dated 19th April 2023, which she says is directly relevant to the physical condition, seaworthiness, environmental risk and value of the vessel at or around the time of seizure; and secondly, the “Commission Evidence”, comprising the Central Agency Agreement, emails, payment information, company records and a report from the Observer newspaper. On the Claimant’s case, the Survey undermines the Respondents’ justification that the vessel was in a dangerous or environmentally threatening condition. On the other hand, the “Commission Evidence” supports an inference that the statutory powers were used, at least in part, for an ulterior or collateral purpose.

Survey Evidence

- [28] Throughout these proceedings, the condition of the vessel at the date of seizure was a heavily disputed issue of fact. The Claimant had even applied for a yacht surveyor to be appointed to inspect the vessel. However, that application was not granted by this court and became academic once the yacht was sold. Further and somewhat unusually for public law litigation, cross-examination was allowed on the issue of the state of the vessel at the date of seizure.
- [29] In this context the Claimant wishes to admit a yacht survey report dated 19th April 2023 which had been commissioned by the Antigua and Barbuda Maritime Administration

¹⁰ Affidavit of Darwin Telemaque dated 14th July 2023

into evidence. The report was prepared by a company named Tsunami Marine. According to this document, an inspection of the vessel took place on 13th -14th April 2023. The Claimant highlights the following findings from the report: The Vessel was in a "laid up status but in safe and seaworthy condition at the time of inspection."

1. "The vessel was found well-appointed and safely moored but was considered to be in laid up status due to the skeletal crew on board and operational status of machinery and equipment."¹¹
2. "No underwater inspection was performed at time of survey however it was noted that the vessel was outfitted with an impressed current system for cathodic protection. The hull boot topping and areas of anti-fouling paint where visible at the water line were all found well maintained and in satisfactory condition. There were no reports of grounding and or underwater hull contacts reported by the Captain."¹²
3. "All bollards, winches, cleats, fairleads and bulwark fittings including grab rails were of stainless steel construction and without damage. All external decks were found provided with teak overlay which was well maintained."¹³
4. "The vessel's port and starboard anchors were deployed at time of survey and therefore not inspected. However, the stainless-steel anchor pockets where visible port and starboard were found without substantial diminution."¹⁴
5. "The main machinery space was found in above average condition with all areas properly maintained with respect to paint coatings and lagging."

¹¹ Tsunami Marine Survey Report-page 4

¹² Tsunami Marine Survey Report-page 4

¹³ Tsunami Marine Survey Report-page 6

¹⁴ Tsunami Marine Survey Report-page 6

The main machinery space was also provided with a mechanical and electrical workshop in addition to a spares and general storage area on the engine room lower deck aft.”¹⁵

6. “The following lifesaving and firefighting equipment were provided on board and randomly inspected. No major defects were noted on these items, however all annual surveys for statutory compliance if the vessel were to resume commercial activities would be required. No operational testing of equipment was performed at time of survey.”¹⁶

[30] The Claimant also relies on the valuation statement contained at page 22 of the survey report. This section of the report will be quoted in full:

“This serves to confirm that it is the opinion of the undersigned surveyor without prejudice, that the vessel “Alfa Nero”, was considered to be in laid up status but in safe and seaworthy condition at the time of inspection.

Due care and attention should be paid to the defects and remarks noted within this report. The vessel was assessed based on her current location and status to have a Forced Sale or Orderly Liquidation Value of Sixty Million United States Dollars (US \$60,000,000.00) with due consideration paid to outstanding liens attached to the vessel for crew wages and supplied services.

Subject to the satisfactory resolution of all pending legal and financial encumbrances and if fully manned and operational the vessel could be considered to have a Market Value of One Hundred and Five Million United States Dollars (US \$105,000,000.00).”

[31] In terms of valuation, according to the report as of 19th April 2023 the M/Y Alfa Nero had a forced sale value of US\$60,000,000.00 and a value of US\$105,000,000.00 provided all outstanding legal and financial issues were addressed. The vessel was also described as being in a “safe and seaworthy” condition.

¹⁵ Tsunami Marine Survey Report-page 17

¹⁶ Tsunami Marine Survey Report-page 20

[32] The Defendants' objections to the survey report may be summarized as follows:

1. The vessel was sold more than a year after the surveyor's observations were made.
2. The Valuation Survey Report was not relied upon for the purpose of determining the condition of the vessel, establishing any immediate necessity for its seizure, or justifying the enactment of the Port Authority Amendment Act 2023.
3. The Valuation Survey Report was prepared subsequent to both the coming into force of the Port Authority (Amendment) Act on 20th March 2023 and the seizure of the vessel on 11th April 2023.
4. With respect to the enactment of the Act and the condition of the vessel, the Defendants state that they relied instead upon the captain's reports and supporting documentation confirming the vessel's condition and status.
5. The Defendants' position is that the vessel's dangerous state, including its abandonment, was the main factor considered before and at the time of seizure.
6. The First Defendant's assessment was not based solely on the vessel's physical condition.
7. The First Defendant further relied upon the risk of deterioration in a pristine harbour, the failure to maintain the vessel and its crew, the failure to discharge debts incurred, the absence of certification, the absence of insurance, and the vessel's deteriorating condition.

[33] It is noteworthy that the Defendants do not deny the authenticity of the report or that it was in their possession. Instead, their primary assertion is that the report was not taken into consideration in deciding to seize and sell the vessel.

[34] I reject the Defendants' submissions that the survey report ought not to be admitted. Although the report post-dates the enactment of the **Port Authority (Amendment) Act** and the formal seizure of the vessel, the inspection on which it is based was conducted from 13th to 14th April 2023, within days of the seizure on 11th April 2023. The fact that the Defendants allege they did not rely on the report in deciding to seize or sell the vessel goes to weight and not admissibility. The central issue is not merely what material the Defendants claim they relied upon, but whether the vessel was in such a condition as to justify its seizure and subsequent sale.

[35] The report is therefore material to the issues to be decided. It records the vessel's condition in addition to valuation evidence which is relevant to the proportionality and consequences of the sale. These matters are directly relevant to the Defendants' reliance on the vessel's dangerous condition, risk of environmental damage and the exception contained at **section 9(4)** of the **Constitution**. The report will therefore be admitted into evidence.

Commission Evidence

[36] What constitutes the Commission Evidence has been previously outlined earlier in this decision. The Claimant submits that these documents are relevant to the true purpose of the seizure, sale and retention of the proceeds of sale of the M/Y Alfa Nero. In particular, she says they show that a government official connected to senior officials of the Government of Antigua and Barbuda was involved in the sale process and that a commission of US\$450,000.00 was paid or intended to be paid in connection with the sale of the vessel.

[37] The Claimant relies in particular on the email of 17th June 2024 from Mr Richard Higgins of Northrop & Johnson to Ms Vuslat Ubogu of the Yildirim Group. The Yildirim group is said to be the ultimate purchaser of the vessel. In that email, Mr Higgins is said to have stated that "Johann works directly with the Prime Minister in his constituency and his right-hand man" and that he "works directly with the port manager on Alfa Nero." The Claimant says that "Johann" is Mr Johann Hesse, then Ambassador of Antigua and

Barbuda to the African Union, and that the reference to the Port Manager is a reference to the First Defendant. On the Claimant's case, this email is material because it links Mr. Hesse, the Prime Minister and the First Defendant to the sale process concerning the vessel.

[38] The Claimant also relies on an email chain of 3rd July 2024 between Mr. Higgins and Mr. Cromwell Littlejohn, also of Northrop & Johnson. In that exchange, after reference to the sale price of US\$40 million, Mr Higgins is said to have described the transaction as "One hell of a deal. Best deal of the century. Ridiculous." The Claimant submits that this email is relevant because it supports her contention that the vessel was sold at a significant undervalue. Thus, the circumstances of the sale would be relevant to the Court's assessment of purpose and proportionality.

[39] Further, the Claimant relies on an email chain of 8th July 2024 between Mr. Higgins, Mr. Hesse and Mr. Rufus Gobat. In that email, Mr Higgins is said to have requested an invoice and bank details so that a fee of US\$450,000.00 could be transferred once the transaction was completed. The Claimant connects this email with the Payment Information dated 24th July 2024, which she says shows a payment of US\$450,000.00 from Northrop & Johnson to Caribbean Lifestyle Services Limited with the reference "Alfa Nero-170724", and with the Companies House (UK) records showing Mr. Gobat's connection to that company.

[40] The Observer newspaper report 18th February 2026 outlines that Mr. Hesse had been removed from his post as ambassador subsequent to the disclosure of the alleged commission in this matter. This article appears to be based on a Cabinet briefing on the matter.

[41] The Claimant's submission is that these emails and related documents are not relied upon merely as background material. Rather, she says they form part of the surrounding circumstances from which the Court may infer that the seizure and sale of the vessel were motivated by an ulterior or collateral purpose.

- [42] The Defendants object to the Central Agency Agreement on the basis that it is irrelevant to the issues tried. They submit that the role of the broker was not an issue at trial, and that the payment of commission by a broker to an agent who located a buyer is an ordinary commercial matter, not of itself an illegal or unconstitutional act. They also point out that the agreement was unsigned, post-dated both the enactment of the **Port Authority (Amendment) Act** and the seizure of the vessel. Therefore, it has no bearing on the constitutionality of the Act or the lawfulness of the seizure.
- [43] As to the emails, the Defendants submit that they are chronologically and substantively irrelevant. The emails were generated in 2024, after the amendment to the Port Authority Act and seizure had already occurred. They therefore could not have informed the Port Manager's decision to seize the vessel, the issuance of the removal notice, or Cabinet's decision to promote the amendment to the Port Authority Act. On the Defendants' case, emails concerning a later sale process or commission payable to a third party cannot assist the Court in determining whether the vessel was abandoned, whether it was dangerous or whether the seizure and sale were constitutional.
- [44] The Defendants further contend that the Claimant is using the emails to introduce a new and unpleaded issue. They say there was no pleaded allegation of corruption or private financial benefit, and that the emails are being deployed to invite a speculative inquiry into matters outside the core issues in the claim. They therefore argue that the emails are irrelevant to the issues to be decided.
- [45] Having heard the parties on this issue, I am not satisfied that the Commission Evidence, taken as a whole, ought to be admitted. The Claimant seeks to rely on these documents to infer that the seizure and sale of the Alfa Nero was affected by an ulterior purpose involving private financial benefit. Taken at their highest, the emails and payment information may reveal a previously undisclosed commission arrangement or questionable conduct by a public official. However, in either case this involves the proceeds of the sale rather than the seizure and decision to sell itself.

[46] Further, this material does not directly establish that **section 38A** of the **Port Authority Act** was enacted for an improper purpose, or that the seizure of the vessel in April 2023 was motivated by any such commission arrangement. The documentation post-dates the enactment of the **Port Authority (Amendment) Act** and the seizure by over a year. Thus, to argue that the Port Authority Act was amended to facilitate the financial gain by a third party is highly speculative. Admitting these documents into evidence would risk diverting the proceedings into a collateral inquiry that is unnecessary to determine the claim.

[47] I take a somewhat different view of the Central Agency Agreement. That document is not in the same speculative category as the emails and related material. It appears to record the contractual framework under which the Government of Antigua and Barbuda, as seller, engaged Northrop & Johnson as listing broker for the sale of the vessel. The agreement contemplated the payment of commission from the proceeds of sale.

[48] Although the agreement does not establish an improper purpose, it is relevant to the proportionality of the steps taken after seizure, including whether the mechanism adopted for sale were reasonably justified. The question of the document being unsigned goes to weight rather than admissibility. Therefore, save for the Central Agency Agreement the application to admit the Commission Evidence is accordingly refused.

Credibility of the Evidence

[49] The third limb of the **Ladd v. Marshall** test namely the credibility of the evidence sought to be admitted, only merits brief consideration in this case. The authenticity of the survey report was not challenged by the Defendants but rather its relevance. In terms of the Central Agency Agreement the Defendants point out that it is unsigned. However, I am prepared to accept it as being credible since the document was received from Northrop & Johnson pursuant to a court order. The question of the document being unsigned will go to weight as previously stated.

- [50] The other material including the emails did not satisfy the second limb of the **Ladd v. Marshall** test namely relevance. However, had I been minded to admit this material, I would have first requested the Claimant to ensure compliance with **section 43** of the **Evidence (Special Provisions) Act**¹⁷ in relation to electronic evidence.

Duty of Candour

- [51] Although the application has been dealt with, some mention must be made of the Defendants' failure to disclose the survey report dated 19th April 2023. The Claimant has complained that this is a breach of the duty of candour which is applicable to public law proceedings and rightfully so. Earlier in these proceedings this court and later the Court of Appeal accepted the principles outlined in **R (Police Superintendents' Association) v Police Remunerations Review Body**.¹⁸ In that case Fordham J. highlighted the following:

"The "Candid Disclosure" Principle. Judicial review is conducted with all cards face upwards on the table meaning full and fair disclosure of all "relevant material" so the court can decide whether the public authority acted lawfully based on an underlying principle that public authorities are engaged in a common enterprise with the court to fulfil the public interest in upholding the rule of law."

- [52] The Court of Appeal in **Tyrone Burke v. Otto Sam** stated:

"I now consider the duty of candour in judicial review proceedings. It is well established that a public authority, impleaded as respondent in judicial review proceedings, owes a duty of candour to disclose materials which are reasonably required for the court to arrive at an accurate decision. The existence and rationale of the duty are not to be equated with procedural rules and practices concerning the burden of proving facts or leading evidence. Its purpose is to engage the authority's assistance in supervising the legality of its decisions: to uphold those which are lawful and correct those which are not. The duty of candour in judicial review proceedings applies throughout the proceedings."¹⁹

¹⁷ Act No. 5 of 2009

¹⁸ [2023] EWHC 1838 (Admin)

¹⁹ SVGHCVP2014/0002 decision dated 15th September, 2015 at para.17 (unreported)

[53] In light of the above guidance and the manner in which this litigation has proceeded, it is disappointing that the Defendants did not disclose the survey report. The report was not only relevant to the issues to be decided, but its non-disclosure was inconsistent with the “cards on the table” approach which is applicable to public law litigation. The Court therefore expresses its dissatisfaction with the Defendants’ actions in the strongest possible terms.

Costs

[54] The Claimant has only partially succeeded on this application in that not all the documents which the Claimant wishes to rely upon have been admitted as fresh evidence. I also take into account the unsatisfactory form of the Claimant’s Notice of Application which failed to specify grounds and the Defendants failure to observe the duty of candour. In the circumstances, the appropriate order is for the parties to bear their own costs of this application.

Order

[55] The Court therefore orders as follows:

1. The following documents are hereby admitted as evidence in this claim:
 - A. Central Agency Agreement between the Government of Antigua and Barbuda and Northrop & Johnson dated 27th March 2024;
 - B. Alfa Nero Condition and Valuation Survey Report dated 19th April 2023;
2. The application to admit fresh evidence in respect of all other documents is dismissed.
3. The parties shall exchange written submissions concerning the fresh evidence on 6th July 2026.
4. A decision on the substantive claim will be delivered thereafter on a date to be notified by the Court Office.
5. No order as to costs.

6. The Claimant shall have carriage of this order.

Rene Williams
High Court Judge

By the Court

Registrar