

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

NEVHCVAP2025/0020

BETWEEN:

DEON & ASSOCIATES LIMITED

Appellant

and

GASTON BARRY DBA GASSPREE

Respondent

Before:

The Hon. Mr. Trevor M. Ward	Justice of Appeal
The Hon. Mde. Esco L. Henry	Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence	Justice of Appeal

Appearances:

Ms. Aymah George with Ms. Kurlyn Merchant for the Appellant
Ms. Emily Prentice-Blackett for the Respondent

2026: April 20

Interlocutory appeal - Setting aside of default judgment - Default judgment - Struck off company - Whether the learned master erred in finding the respondent had a realistic prospect of successfully defending the claim - Rule 13.3(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 - Exceptional circumstances - Separate legal personality - Proper party to proceedings - Whether cause of action lay against the respondent in personal capacity or against a limited liability company - Evidence of acts demonstrating trading capacity - Section 484(6) of the Companies Ordinance of Nevis - Whether appellant's remedy lay in application to restore company to bring claim against corporate entity rather than respondent personally - Whether the master failed to properly apply relevant principles of law - Whether findings of fact were supported by evidence

REASONS FOR DECISION

- [1] **CENAC-PHULGENCE JA:** On 20th April 2026, after hearing arguments, the Court allowed the appeal against the Order of Saunders M dated 14th July 2025 setting aside the judgment in default dated 14th March 2022 and ordering the defendant to file its defence within fourteen (14) days of the Order. The Court also awarded costs to the appellant to be assessed if not agreed within 21 days of the date of the Order. The Court promised to provide written reasons for its decision. These are those reasons.

Background

- [2] The appellant, Deon & Associates (the claimant in the court below) filed a claim against the respondent, Gaston Barry dba Gasspree (the defendant in the court below) on 30th July 2021 for monies due and owing to Deon & Associates for items which had been purchased for the respondent and for replacement costs for items which had been delivered to the respondent for repairs and had not been repaired or returned.
- [3] The respondent is the owner and General Manager of Gasspree, located on the island of Nevis, which is in the business of air conditioning, refrigeration, electrical, plumbing and repair of equipment and appliances. The appellant is a former customer of the respondent who conducted work for the appellant including air conditioning, installation and repairs of appliances.
- [4] The respondent having not filed an acknowledgement of service or a defence to the claim, judgment in default was entered against the respondent on 14th March 2022 for an amount to be decided by the Court. The Court entered its judgment on the assessment of damages on 14th March 2022 at which time the respondent was not present although he had been served.
- [5] On 7th June 2022, the appellant filed an affidavit of service of the Order dated 14th March 2022 on the respondent. Thereafter, the appellant took steps to enforce its judgment by filing a judgment summons on 16th July 2024. This

judgment summons came up for hearing on several occasions before the court and orders were made as follows:

25th September 2024 - Hearing of judgment summons adjourned to 23rd October 2024;

24th October 2024 - The court ordered that certain sums be paid. At this hearing the respondent was unrepresented and indicated that he needed time to retain counsel. He indicated that he had some financial difficulties but that he could pay \$2,000.00 on that day and \$6,000.00 by the next Friday and that he was making efforts to accumulate the funds so that he could pay off the debt quickly;

21st November 2024 - The court ordered that certain sums be paid and ordered the respondent to file and serve an affidavit of means including any assets, liabilities and plans to settle his indebtedness. The court enquired at this hearing how much the respondent could pay, and the respondent indicated that he could pay \$10,000.00 by the close of business that day;

17th December 2024 - The court asked the respondent how he planned to settle the debt. The respondent at that hearing indicated that he had read the claim documents and realised that the documents were incorrect or falsified and noted that he did not owe the appellant. He indicated that the EC\$26,000 that he already paid is all he owes and he needed counsel to help him set aside the judgment. The matter was adjourned;

11th February 2025 - The respondent was still unrepresented. It was noted that the respondent had paid EC\$48,515.05 so far. The court made orders for further payment and also ordered that the respondent file and serve any application to set aside the judgment and supporting affidavits on or before 24th February 2025.

[6] The application to set aside the default judgment was filed on 25th February 2025 supported by an affidavit of Laverne Berkeley filed on 27th February 2025. By Order of 14th July 2025, the learned master set aside the default judgment dated 14th March 2022 and ordered that the respondent file his defence within fourteen (14) days. It is this Order which is the subject of appeal.

The Appeal

- [7] The appellant has advanced several grounds of appeal which specifically challenge paragraphs 8, 14, 15, 16, 17, and 18 of the learned master's order. These grounds have been summarised below.

Ground 1 - The learned master failed to properly consider and/or apply the relevant principles of law and erred in fact and law in finding that the respondent was not the proper party as defendant to the proceedings in Claim. No. NEVHCV2021/0107 and that the claim is against the company Gasspree Services Limited which is a separate legal entity and was incorrectly brought against the defendant in his personal capacity.

Ground 2 - The learned master erred in fact and in law in finding that the respondent did not purport to trade in his own name at the relevant time and traded as Gasspree Services Limited when the said company did not exist at the time the cause of action arose or at the time of service.

Ground 3 - The learned master erred in fact and in law in finding that but for the fact of Gasspree Services Limited being struck off the register the claim would have been brought against it.

Ground 4 - The learned master was wrong in his decision that there was no clear contention that the respondent sought to conduct business in his own name or under the name of some business "Gasspree" as is the purport of the title to the proceedings.

Ground 5 - The learned master erred in finding that the appellant could have advanced its claim by applying to restore the company Gasspree Services Limited pursuant to section 484(6) of the **Companies Ordinance of Nevis** ("the Companies Ordinance")¹ so that a claim could be made against it.

Ground 6 - The learned master erred in finding that when one considered the allegations which put the claimant to proof of his debt on the basis that the

¹ Cap. 7.06, Revised laws of St. Christopher and Nevis.

invoice and terms allegedly supplied therein were contrived, the defendant had put forward a draft defence which has a realistic prospect of success.

[8] At the heart of the grounds of appeal is the question whether the learned master erred in concluding that the appellant could not have brought his claim against Mr. Barry in his personal capacity given that it was the company Gasspree Services Limited which was being dealt with, albeit the company had been struck off the register several years prior to the date of the alleged transactions from 2016 onwards.

[9] Grounds 1 through 5 will be addressed together.

The Master's Decision

[10] At paragraph [8], the learned master found that the respondent had a realistic prospect of success on his defence on two bases: (a) that the allegations that the invoice and items supplied were contrived put the appellant to proof of his debt and (b) the ground relating to the proper party to the proceedings.

[11] At paragraph [14] the master referred to paragraphs [34] and [35] of the affidavit of Deon Daniel and stated that this made it clear that the respondent was sued in his personal capacity as it was felt that Gasspree could not be named as the defendant as it had been struck off the register. The master held that the impact of that fact was that the cause of action which the claimant sought to advance was one against the company which is a separate legal entity. He further held that the claimant's cause of action was not optional and it did not get to choose the party who owes the debt.

[12] The learned master stated that the defendant's statements made it clear that but for the fact of Gasspree being struck off the register, the claim would have been brought against it. He also found that it was for the appellant to produce evidence to demonstrate that the respondent intended to conduct business in his personal capacity and not on behalf of the company Gasspree.

- [13] The learned master was of the view that whilst the appellant suggested that it had no recourse but to sue the defendant personally, this was not the case as section 484(6) of the **Companies Ordinance** provides, in summary, that a creditor may apply to restore a struck company to the register so that a claim may be made against it.
- [14] The learned master found that since the claim was wrongly brought against the respondent in his personal capacity as opposed to the limited liability company, Gasspre Services Limited, this raised exceptional circumstances pursuant to rule 13.3 of the **Eastern Caribbean Supreme Court Civil Procedure Rules 2000** (“the CPR”).

Grounds 1 – 5

The Appellant’s Submissions

- [15] The appellant argued that paragraphs 14 to 17 of the Order by Master Saunders incorrectly determined that the claim was initiated against the wrong party having been brought against Gaston Barry in his personal capacity and not the limited liability company Gasspre Services Limited (“the Company”).
- [16] The appellant relied on the case of **Kelner v Baxter and Others**² in support of its submissions. In that case, the plaintiff entered into a contract to sell stock to A, B and C on behalf of a proposed company Gravesend Royal Alexandra Hotel Company. A, B and C accepted the offer from the plaintiff on behalf of Gravesend Royal Alexandra Hotel Company. The goods were handed over to the representatives of the proposed company and were consumed in the business. The company obtained a certificate of incorporation but collapsed before the money was paid. The plaintiff brought an action against the A, B and C personally. It was held that A, B and C were personally liable. As per Erle C.J.,

“I agree that if the Gravesend Royal Alexandra Hotel Company had been an existing company at this time, the persons who signed the agreement would have signed as agents of the company, But, as there was no company in existence at the time, the agreement would be wholly inoperative unless it were to be held to be binding on the

² (1866) LR 2 CP 174.

defendants personally. The cases referred to in the course of the argument fully bear out the proposition that, **where a contract is signed by one who professes to be signing “as agent”, but who has no principal existing at the time, and the contract would be altogether inoperative unless binding upon the person who signed it, he is bound thereby: and a stranger cannot by a subsequent ratification relieve him from that responsibility.**³ (Emphasis added)

- [17] The appellant submitted that there are no exceptional circumstances as the claim was correctly filed against the respondent in his personal capacity.
- [18] The appellant argued that the respondent's contention at paragraph 2 of the draft defence that Gasspree Services Limited is a limited liability company incorporated in 1997 under the Companies Act and continued in 2004 under the Companies Ordinance of Nevis is fundamentally wrong.
- [19] It is accepted by both parties that Gasspree Services Limited was struck off the Register of Companies effective 18th October 2011.
- [20] The appellant argued that given that Gasspree Services Limited was struck off the local register and the claim would have been in relation to dealings between the appellant and the respondent in his personal capacity from 2016 onwards, there were no bars to commencing proceedings against the Respondent in his personal capacity.
- [21] The appellant further submitted that between the time of the dealings between the parties in 2016 and 2017 and the subsequent filing of the claim in 2021, Gasspree Services Limited was already struck off the register. The appellant contended that during that period all dealings were conducted with the respondent in his personal capacity and that there was no indication in its claim that it had conducted business with Gasspree Services Limited which required an application that the company be restored to the register. There was in effect no basis for the appellant to have sought the restoration of the company.

³ Ibid [183].

- [22] The appellant referred to the case of **Cowley v L W Carlisle & Co Ltd**⁴ and contended that it supported the position that the claim could not have been brought against Gasspree Services Limited, a struck off company at the date of the transactions.
- [23] Applying **Cowley**, the appellant submitted that there were no bars to commencing proceedings against the respondent in his personal capacity as there were absolutely no dealings with Gasspree Services Limited and Gasspree Services Limited was not an existing company or a legal entity capable of being sued in any event.
- [24] According to the appellant the issue raised regarding the commencement of proceedings against the wrong party fails to satisfy the meaning of CPR 13.3(3) and the test as espoused in **Baynes v Meyer**.⁵

The Respondent's Submissions

- [25] The respondent submitted that he never traded on his own behalf, that all business transacted by him was on behalf of the company Gasspree Services Limited which is an incorporated company and not in his personal capacity and that Gasspree has its own phone number, bank accounts and cheques which are different from his personal information. The respondent further submitted that any business he did with the appellant was done as an officer of the company. He argued that the appellant was never his customer personally and instead was a former customer of Gasspree Services Limited for twenty years.
- [26] The respondent therefore contended that all dealings as it relates to air conditioning, refrigeration, electrical, plumbing and repair of equipment were done between the appellant and Gasspree Services Limited and not between the appellant and the respondent personally.

⁴ [2020] EWCA Civ. 227.

⁵ ANUHCVP2015/0026 (delivered 30th May 2016, unreported) [26].

[27] The respondent's position was that he never acknowledged nor accepted the judgment debts and that the monies were paid (i) at a time when the respondent was ill and relented and signed an agreement to pay, (ii) to avoid further harassment and (iii) mostly in response to Court Orders under threat of imprisonment. The respondent's position was that he never acknowledged or voluntarily made any payments to the appellant.

[28] The respondent submitted that the learned master did not err in finding that the proper party was Gasspree Services Limited, especially in light of the fact that it was his lawyer who advised them that the company was struck off the register. It was reasonable in those circumstances for the learned master to have concluded that the appellant had intended to sue the company Gasspree Services Limited but only did not because of the advice of his lawyer. The respondent contended that it was correct for the learned master to conclude that the appellant ought to have restored the company and sued for the judgment debt.

Ground 6

[29] The appellant contended that the learned master incorrectly determined that the draft defence had a realistic prospect of success and failed to properly consider and apply the relevant principles of law while the respondent submitted that the learned master did not so err.

[30] The appellant submitted that the learned master erred in his determination that the allegations put forward by the respondent in its draft defence that the invoices and items supplied were contrived satisfied the requirement of a 'real prospect of success' in the face of the appellant's evidence of its invoice dated 1st April 2016, sales order dated 8th March 2017 and the agreements where the respondent accepted and acknowledged the debt. The learned master arrived at the decision notwithstanding the fact that the appellant had relied on the case of **ED & F Man Liquid Products Ltd v Patel and another**.⁶

⁶ [2003] All ER (D) 75 (Apr).

[31] The appellant argued that while the learned master, in interpreting the case of **ED & F** determined that a judge will be justified in taking the acknowledgements made by the respondent of the debt into account as an indication of the likely substance of the issues raised and the ultimate success of the draft defence, he erred in finding that the case was not applicable because the proceedings had been brought against the wrong party. Further, the learned master erred in not taking into account the respondent's payments and executed agreements and gave little weight to the respondent's repeated acceptance and acknowledgement of the debt. The appellant submitted that the draft defence was merely arguable.

Discussion and Analysis

[32] The respondent's application to set aside the default judgment was made pursuant to CPR 13.3(3) or alternatively CPR 13.3(2).

[33] The learned master found in relation to CPR 13.3(2) that the respondent had not provided a good explanation for his failure to file nor had he applied to the court as soon as reasonably practicable after finding out that judgment had been entered. The appellant does not challenge any of these findings.

[34] There is an overlap in grounds 1-5 and 6 and the analysis addresses both issues in contention, whether the learned master erred in finding that the draft defence had a realistic prospect of success and that there were exceptional circumstances shown, the respondent being the wrong defendant to the claim.

[35] Firstly, the learned master found that the defendant's draft defence raised a real prospect of success in that it raised allegations that the invoice and items supplied were contrived and therefore put the appellant to proof of his debt and further that the defendant was not the proper party to the proceedings.

[36] In determining whether the draft defence in a set aside application raised a real prospect of success, it is trite that what the Court is required to determine is

whether there is a realistic, as opposed to a fanciful, prospect of success.⁷ A realistic prospect of success suggests something better than merely arguable.⁸

[37] In **ED & F**, default judgment was entered against the defendants for failing to file an acknowledgement of service. The court held that the second defendant had a real prospect of success. The court was further of the view that the first defendant had no real prospect of success ‘in the light of a series of unqualified admissions of the claimant’s debt over a prolonged period prior to judgment’.

[38] On appeal the court held that the defendant had no real prospect of success in the light of the admissions made prior to judgment. The court found that the judge had been entitled to find that it simply was not credible that such acknowledgements would have been made by the first defendant without any suggestion that payment was not due under whatever contractual arrangements existed between the parties.

[39] On appeal Potter LJ further expressed the following:

“ ... where there is a claim or judgment for monies due and issues of fact are raised by a defendant for the first time which, standing alone would demonstrate a triable issue, if it is apparent that, with full knowledge of the facts raised, the defendant has previously admitted the debt and/or made payments on account of it, a judge will be justified in taking such acknowledgements into account as an indication of the likely substance of the issues raised and the ultimate success of the defence belatedly advanced.”⁹

[40] In **ED & F**, there were exchanges of letters and correspondence between the parties regarding the settlement of the debt. The claimant demanded payment of the outstanding sums and the defendants promised to settle the debt by specific dates through proposed repayment schedules and made payments towards the debt.

⁷ Swain v Hillman [2001] 1 All ER 91 [8].

⁸ International Finance Corporation v Utefafrica SPRL [2001] All ER (D) 101 (May).

⁹ ED & F Man Liquid Products Ltd v Patel and another [2003] All ER (D) 75 (Apr) at [11].

- [41] As pointed out in this case, the respondent made payments towards the judgment debt totalling in excess of \$48,000.00, executed agreements acknowledging the debt and did not raise any issues about liability. Since the filing of the judgment summons on 16th July 2024, the respondent indicated to the court below that steps would be taken to satisfy the judgment debt. The appellant therefore contended that the respondent's conduct did not suggest that he had any dispute with the claim or default judgment nor did he raise that the invoices and items supplied were contrived at the time these were supplied.
- [42] The respondent suggested that because the agreements referred to by the appellant did not indicate what the judgment debt was, they could not be indicative of an acknowledgement of the debt by the respondent. He also suggested that these agreements were executed whilst he was ill and not able to fully address his mind to the matter.
- [43] Whilst it is correct that all of the executed agreements did not state the amount of the judgment debt, in the agreement dated 25th January 2023, the defendant "agreed that as per the court judgment, Mr. Gaston Barry owes Deon & Associates Ltd the sum of One Hundred and Forty Seven Thousand[s] Two Hundred and Sixty Dollars and Ninety-Seven Cents Eastern Caribbean Dollars (EC\$147,260.97)" and he agreed to pay EC\$1,000.00 monthly for six months. In the previous agreement dated 22nd July 2022, it stated that the defendant 'agreed that as per the court judgment' he would issue a post-dated cheque for the sum of \$2,500.00.
- [44] The agreements acknowledge that there is a court judgment and the defendant made certain commitments in relation thereto.
- [45] The respondent's attempt to characterise his prior payments and agreements as acts done without acknowledgement of liability must be viewed in light of the objective evidence. The pattern of conduct, comprising multiple payments, structured repayment commitments, and express reference to a subsisting court judgment is not reconcilable with an honest belief that no debt was owed.

[46] While it is open to a defendant to assert that payments were made for reasons other than liability, such assertions must be credible in the commercial context. As observed in **ED & F**, the court is entitled to take a realistic view of business behaviour. It would be improbable that a person engaged in business over many years would repeatedly commit substantial sums toward a debt which he did not accept, without at any stage raising a dispute as to liability.

[47] The absence of any such dispute until the stage of enforcement materially undermines the plausibility of the draft defence.

[48] In **ED & F**, the defendants had alleged that the sums were paid without the intention of admitting liability and was simply to stop the claimant from hassling them. The court observed that the first defendant had been in business for some twenty (20) years, and it therefore could not accept that he would have made the admissions of the debt if he did not genuinely accept liability. Like in the case of this respondent, he only raised this when he filed his application to set aside the default judgment.

[49] In **Carl Baynes**, the test for what constitutes exceptional circumstances under CPR13.3(2) was comprehensively stated as follows:

“... What may or may not amount to exceptional circumstances must be decided on a case-by-case basis... it must be ‘one that provides a compelling reason why the defendant should be permitted to defend the proceedings in which the default judgment has been obtained’. It must be something more than simply showing that a defence put forward has a realistic prospect of success. Showing exceptional circumstances under CPR 13.3(2) does not equate to showing realistic prospects of success under CPR13.3(1)(c)... Sub-rule(2) is intended to be reserved for cases where the circumstances may be said to be truly exceptional, warranting a claimant being deprived of his judgment where an applicant has failed, to satisfy rule13.3(1).”¹⁰

[50] The court went on further to note examples of exceptional circumstances.

“For instance, where it can be shown that the claim is not maintainable as a matter of law or one which is bound to fail, or one with a high degree of certainty that the claim would fail or the defence being put

¹⁰ ANUHCVP2015/0026 (delivered 30th May 2016, unreported) [26].

forward is a 'knock out point' in relation to the claim; or where the remedy sought or granted was not one available to the claimant. This list is not intended to be exhaustive."

- [51] The concept of 'exceptional circumstances' under CPR 13.3(2) is deliberately stringent. It is not sufficient that a defendant raises an arguable defence, nor even one with a realistic prospect of success. The rule is designed to protect the finality of regularly obtained judgments and to prevent the reopening of litigation absent compelling justification.
- [52] In the present case, the factor relied upon by the learned master, namely, that the claim had been brought against the 'wrong party' does not, even if correct, attain the level of exceptionality contemplated by the rule. Issues as to proper parties are routine features of civil litigation and are ordinarily addressed through amendment or procedural correction. They do not, without more, constitute a circumstance rendering the claim unmaintainable.
- [53] More significantly, once it is recognised that the respondent was, in law, the proper defendant, the very foundation of the learned master's finding of exceptional circumstances falls away. There is no residual feature of the case, whether procedural, factual, or equitable, which could justify displacing a regularly entered judgment.
- [54] To hold otherwise would risk diluting the high threshold imposed by CPR 13.3(2) and would undermine the principle that litigation must, at some point, come to an end.
- [55] In **Cowley**, the Court of Appeal upheld the decision of the district judge to strike out a claim against a company that was struck off the register. At the lower court the district judge stated:
- "...this Court will only allow process against a company that exists and will only correct errors in procedure where there is imminent restoration, and that is your problem ..."

[56] Upon appeal, the court held:

“... he [the District Judge] was entitled to consider whether the overriding objective was properly served by the continued presence in the action of the name of a non-existent company. He was entitled to consider whether he should exercise the power to strike out the claim purportedly brought against LWC and he did not err in principle in making the strike out order that he did for the short reasons that he gave.”¹¹

[57] The respondent referred the Court to the case of **Williams and anor v Natural Life Health Foods Ltd and anor**¹² and submitted that in order to fix a director with personal liability, it must be shown that he assumed personal responsibility for the negligent misstatement made on behalf of the company. Applying this case, the respondent submitted that (i) the appellant had a 20-year business relation with Gasspree Services Limited during which time the respondent was a Manager; (ii) there was no pleading in the statement of claim that Gasspree was struck off, that the respondent had personally assumed responsibility for the company after it was struck off or that the respondent had knowledge that Gasspree Services Limited had been struck off.

[58] The respondent has premised his submissions on the fact that he did not accept or assume personal responsibility and therefore he could not be personally liable for the debt. He has also argued that the appellant did not plead the status of the company suggesting that it did not know that the company had been struck until later when its lawyer had advised of this.

[59] It is not disputed that the company Gasspree Services Limited was struck off the register of companies in 2011 and was never restored. The state of mind of the appellant or the defendant at the time of the alleged transactions in 2016-2017 does not change that fact. Whether or not the parties knew about the company's status does not change the answer to the question whether as a struck off company, Gasspree Services Limited could have transacted business with the appellant as a legal entity. **Williams** is therefore not helpful to the respondent's arguments. The fact that the company was struck off meant that

¹¹ [2020] EWCA Civ 227 [33].

¹² [1998] UKHL 17.

the respondent would not be transacting business on behalf of the company and could only have been doing so in his personal capacity. There is no allegation that the transactions were entered into with anyone but the respondent.

[60] The learned master's reasoning proceeds on the implicit assumption that historical existence of a corporate entity is sufficient to attribute liability to that entity, irrespective of its legal status at the time of the transactions. That approach is flawed. The critical inquiry is not whether Gasspree Services Limited once existed, but whether it had legal capacity at the time the transactions were undertaken.

[61] A company which has been struck off the register ceases to exist as a legal person for the purpose of carrying on business and entering into new contractual obligations. It is important to note that while struck off, a company cannot legally engage in business activities, and any such actions taken during this period may be invalid or unenforceable unless the company is subsequently restored.¹³ While statutory provisions may preserve liabilities for enforcement purposes, they do not operate to clothe the defunct entity with ongoing transactional capacity. To hold otherwise would be to recognise a form of legal personality divorced from statutory compliance.

[62] In those circumstances, any representation by the respondent that he was acting on behalf of Gasspree Services Limited could not, as a matter of law, give rise to a principal-agent relationship. There was no principal in existence capable of authorising or ratifying the acts in question. The legal consequence of such conduct is trite: where a person purports to act on behalf of a non-existent principal, liability attaches to that person personally.

[63] This is not a matter of election on the part of the appellant, but a consequence imposed by law. The appellant did not choose to sue the respondent personally; rather, the legal structure of the transactions admits of no other proper defendant.

¹³ *Beauchamp Pizza Ltd v Coventry City Council* [2010] EWHC 926 (Ch).

- [64] Accordingly, the learned master erred in treating the issue of proper party as one turning on the claimant's intention or litigation strategy, rather than on the objective legal capacity of the alleged contracting entity.
- [65] Because the learned master fell into error in determining that the wrong party had been sued, and that the respondent could not be sued in his personal capacity since the company had been struck off since 2011 and remained struck off at the time of the alleged transactions in 2016-2017, he failed to appreciate that the company, having been struck off the register of companies, could no longer legally transact business. Any business dealings in 2016-2017 could only have been entered into with the respondent personally as the company Gasspre Services Limited was not in good legal standing and could not transact business.
- [66] Further, as stated in **Kelner v Baxter**, the respondent could not purport to act on behalf of an entity which did not have legal status and no legal personality. This therefore could not amount to exceptional circumstances as the learned master found.
- [67] Gasspre Services Limited as per the notice published in the Official Gazette was said to have been struck off pursuant to section 511(4) of the 1999 Nevis Companies Ordinance (replaced by section 513(4) of the 2017 revised edition of the Companies Ordinance¹⁴). Section 514 of the **Companies Ordinance** provides:
- “Where a body corporate is struck off the register, the liability of the body corporate and of every director, officer or shareholder of the body corporate continues and may be enforced as if it had not been struck off the register.”
- [68] In **JSN Development Group Limited et al v Global Bank of Commerce Limited et al**,¹⁵ this Court considered the import of section 512 of the

¹⁴ Cap. 7.06(N), Revised Laws of Saint Christopher and Nevis 2017.

¹⁵ ANUHCVP2022/0025 (delivered 23rd March 2026, unreported) at [77].

Companies Act of Antigua and Barbuda (which is similar to section 514 of the Companies Ordinance) and concluded that that section was concerned with preserving and enforcing liabilities of and against a company. It is a savings provision. This Court held that the section:

“... prevents those associated with the company from escaping responsibility by reason only of the administrative removal from the Register. It does not follow that the section preserves or confers on the struck off entity a continuing capacity to invoke the jurisdiction of the court to pursue proceedings in its own name. The continuation of liability is directed to the protection of those to whom obligations are owed. It is not directed to enabling the struck off company to prosecute litigation for its benefit while it remains outside the statutory regime of compliance which registration entails.”

[69] Although **JSN Development** dealt with the question of whether a struck off company could institute proceedings in its own name the principles enunciated in that case are applicable in this case. A struck off company does not have the capacity to undertake transactions and incur new liability while the company continues to be outside the statutory regime of compliance applicable to a company. Section 514 of the **Companies Ordinance** is aimed at ensuring that when a company is struck off the register, existing liabilities can still be enforced by judgment creditors. The company cannot continue business as usual. It has no and lacks legal capacity to do so.

[70] Having failed to appreciate the correct status of the company, Gasspre Services Limited at the time of the alleged transactions in 2016-2017, the learned master erroneously concluded that the company simply needed to be restored to the register in order to be sued and that the respondent could not have been sued in his personal capacity. Having so concluded, the learned master did not have regard to the actions of the respondent in making payments towards a debt which he says he did not accept was his to bear, when considering whether the draft defence had a realistic prospect of success.

Disposition

[71] Accordingly and for the reasons stated above, we made the following orders:

- (1) The appeal is allowed.
- (2) The orders made by the Master dated 14th July 2025 are set aside.
- (3) The appellant shall have its costs to be assessed if not agreed within 21 days.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Deputy Chief Registrar