

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVAP2018/0047

BETWEEN:

**[1] ALTHEA MAYNARD
[2] NATHANIEL MAYNARD**

Appellants

and

**EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION
(as receiver of ABI BANK LTD)**

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal

Appearances:

Dr. David Dorsett for the Appellants
Ms. Kamilah Roberts with her Mrs. Andrea Roberts-Nicholas for the Respondent

2019: September 18;
2020: February 13.

Civil Appeal - Interlocutory Appeal – Statutory Interpretation – Banking Act of Antigua and Barbuda - Section 144(1)(c) of the Banking Act – Purposive interpretation - Whether learned judge erred in staying the proceedings against a receiver pursuant to section 144(1)(c) of the Banking Act – Section 40 of the Interpretation Act – Application of definition where contrary intention appears

On 23rd July 2008 Mrs. Althea Maynard and Mr. Nathaniel Maynard (“the appellants” or “the Maynards”) obtained a loan from ABI Bank Ltd (“ABI Bank”). In 2016, The Eastern Caribbean Central Bank (“ECCB”), by Notice published in the Antigua and Barbuda Official Gazette, revoked the banking licence granted to ABI Bank preventing it from carrying on

banking business in Antigua and Barbuda effective 5th January 2016. Ms. Samuel-Fields was appointed as receiver and subsequently, the Eastern Caribbean Asset Management Corporation ("ECAMC") was appointed as receiver of ABI Bank by the ECCB.

The Maynards filed a fixed date claim form with affidavit in support on 17th September 2018 against ECAMC as receiver of ABI Bank seeking, among other remedies, an account of monies paid on the loan and an account of the parties' interest in certain lands. The ECAMC filed an application for a stay of proceedings ("the application") pursuant to section 144(1)(c) of the Banking Act claiming that by virtue of ABI Bank being in receivership, and a receiver having been appointed, it could not be sued. The learned judge granted the order staying the whole of the proceedings.

The appellants, being dissatisfied with the learned judge's decision, have appealed. The appellants argued that at the time the claim was filed, ABI Bank was not a 'licensed financial institution' or 'licensed financial holding company' within meaning of section 2 of the Banking Act, since its licence was revoked. Consequently, they contended, ECAMC could not avail itself of the rights, etc. under section 142(1) of the Banking Act and by extension the protection against litigation afforded by section 144(1)(c) of the Banking Act.

The main issue that arises to be determined is whether the learned judge erred in concluding that section 144(1)(c) of the Banking Act, which provides that all legal proceedings against a licensed financial institution or licensed financial holding company are stayed pending leave of the court, was applicable and in so concluding, granted a stay of proceedings pursuant to same.

Held: dismissing the appeal and awarding costs to ECAMC in the court below to be assessed if not agreed within 21 days and on the appeal, two-thirds of the costs assessed in the lower court, if not agreed within 21 days, that:

1. The court, in interpreting statutes, has to give regard to the intention of Parliament when the specific act was passed. Where the words, read in their plain and literal sense and in the full legislative context, accord with the legislation's object and purpose, then there is no need to go beyond their ordinary meaning. However, where applying the strict and literal approach, would produce an absurd and undesirable result, the court is permitted to apply a purposive construction to enable the object and purpose of the legislation to be fulfilled.

Pepper v Hart [1993] A.C. 593 applied; **Global Education Providers Inc. v The Honourable Petter Saint Jean et al** DOMHCVAP2012/0009 (delivered 4th May 2018) followed.

2. In interpreting statutes, the court must consider the words in their immediate context, the legislative context and the legislation's object and purpose in order to give effect to Parliament's intention. The object and scheme of the Banking Act, in relation to banks in receivership, is to protect them against legal action thereby allowing the receivers to fulfil their role without legal

interruption. Section 144(1)(c) mandates that all legal proceedings against a licensed financial institution or licensed financial holding company be stayed upon the appointment of a receiver pending leave of the court. To require the receiver to have a licence to be afforded protection would effectively mean that the protection contemplated by section 144(1)(c) would not be afforded to any financial institution under receivership as their licences would have been revoked automatically.

Part X of the **Banking Act 2015**, Act No. 10 of 2015, Laws of Antigua and Barbuda applied; **Global Education Providers Inc. v The Honourable Petter Saint Jean et al** DOMHCVAP2012/0009 (delivered 4th May 2018) followed; **Asiyah Grant v Javier Maduro Douglas** BVIHCVAP2019/0001 (delivered 13th November 2019, unreported) followed; **Douglas (Clayton) v The Police** (1992) 43 WIR 175 followed.

3. The aim of statutory definitions is to avoid frequent repetitions when describing the subject matter to which the word or phrase is intended to apply. These definitions are often found in the interpretation section of a statute and are to be understood and used for the purpose of that particular Act. However, a statutory definition does not apply if, in light of the legislative context, the contrary intention appears. Section 2 of the Banking Act which defines 'licensed financial institution' and 'licensed financial holding company' cannot override the clear and extensive words in the body of the statute in light of the aforementioned object and purpose of the legislative framework.
4. In this case, where the definition section seems to support otherwise than the purposive meaning of the specific statutory provision of the Act, the latter should be interpreted to give effect to the purpose and object of the Banking Act; that is, to bring the bank under the supervision and control of the receiver. It could not have been the intention of Parliament that receivers have no protection against litigation, simply because the bank no longer had a licence due to its revocation. Accordingly, the word "formerly" must be read into the definitions in order to make the legislation workable in relation to banks that are in receivership.

Section 2 of the **Banking Act 2015**, Act No. 10 of 2015, Laws of Antigua and Barbuda considered; Section 40(2) of the **Interpretation Act**, Cap. 224 of the Laws of Antigua and Barbuda applied; **Global Education Providers Inc. v The Honourable Petter Saint Jean et al** DOMHCVAP2012/0009 (delivered 4th May 2018) followed; **Asiyah Grant v Javier Maduro** BVIHCVAP2019/0001 (delivered 13th November 2019, unreported) followed.

JUDGMENT

Introduction

- [1] **BLENMAN JA:** This is an interlocutory appeal by Ms. Althea Maynard and Mr. Nathaniel Maynard (“the Maynards” or “the appellants”) against the decision of the learned judge, the Honourable Rita Joseph-Olivetti [Ag.] in which she stayed the claim that the Maynards had brought in the court below against the Eastern Caribbean Asset Management Corporation (“ECAMC”) as receiver of ABI Bank Ltd (“ABI Bank”). The learned judge held that by virtue of section 144(1)(c) of the **Banking Act 2015**¹ (the “Banking Act”) ECAMC was protected. The appellants argued that the claim which they brought in the High Court was not one which could be stayed pursuant to the **Banking Act**. In addition, the judge ordered costs against the Maynards. They have appealed against the judge’s decision. The appeal is resisted by the ECAMC.

Background

- [2] On 23rd July 2008, Mr. and Mrs. Maynard obtained a loan from ABI Bank. ABI Bank fell into difficulties and The Eastern Caribbean Central Bank (“ECCB”), the organisation that provides regulatory control and supervision over banks in the Eastern Caribbean, appointed Ms. Megan Samuel-Fields on 27th November 2015 as receiver of ABI Bank.
- [3] In 2016, the ECCB, by Notice published in the Antigua and Barbuda Official Gazette, revoked the banking licence granted to ABI Bank thereby preventing it from carrying on banking business in Antigua and Barbuda effective 5th January 2016.

¹ Act No. 10 of 2015, Laws of Antigua and Barbuda.

- [4] Subsequently, the ECAMC was appointed as receiver of ABI Bank on 18th July 2017, replacing Ms. Megan Samuel-Fields as receiver. It should be noted that Ms. Samuels-Fields is the Chief Executive Officer of the ECAMC.
- [5] The Maynards filed a Fixed Date Claim Form on 17th September 2018 against ECAMC, as receiver of ABI Bank, seeking the following remedies:
- “(1) An order that the Claimants’ loan account, a/c#21318835, be credited with the sum of \$2,200.00/day from 24th July 2008 to 25th August 2011.
 - (2) All further proper accounts, inquiries and directions for the proper determination of the Claimants’ interest in land being registered in the Land Registry as Registration Section: Sutherlands; Block 64 1892D; Parcels 39, 205 and 206.
 - (3) Costs;
 - (4) Damages;
 - (5) Any other relief that the court deems fit pursuant to section 20 of the Eastern Caribbean Supreme Court Act.”
- [6] On 4th October 2018, the ECAMC filed an application for a stay of the Maynards’ proceedings (“the application”) pursuant to section 144(1)(c) of the **Banking Act** claiming that by virtue of ABI Bank being in receivership, it could not be sued.

Order in the court below

- [7] The learned judge, upon hearing the application, ordered that the whole proceedings be stayed pursuant to section 144(1)(c) of the **Banking Act**.

The Appeal

- [8] Dissatisfied with the decision of the learned judge, and having obtained the required leave to appeal, the Maynards appealed to this Court to set aside the order of the learned judge.

Issue

- [9] The sole issue that arises for this Court's determination is whether the learned judge erred, as a matter of law, in concluding that section 144(1)(c) of the **Banking Act** was applicable and erred in granting a stay of proceedings pursuant to same.

Submissions on behalf of the Maynards

- [10] Learned counsel, Dr. Dorsett, contended that the ECAMC cannot rely on section 144(1)(c) of the **Banking Act**. Dr. Dorsett argued that section 2 of the **Banking Act** defines the terms "licensed financial holding company" and "licensed financial institution". He submitted that section 142(1) refers to the relationship between a receiver and a licensed financial institution or licensed financial holding company. He pointed out that upon appointment, the receiver shall become the sole legal representative and the successor of all rights, titles, powers and privileges of the said licensed financial institution or financial holding company.
- [11] Dr. Dorsett argued that ABI Bank was a licensed financial institution up until its licence was revoked by the ECCB on 5th January 2016. He contended that by the time the Maynards filed their action against ABI Bank, some 30 months after the revocation, it was no longer a licensed financial institution under the **Banking Act** as a matter of law and fact. He maintained that ABI Bank could not claim the protection afforded by section 144(1)(c).
- [12] Furthermore, Dr. Dorsett contended that it is the court's duty to give effect to the intention of Parliament. He said that the provisions of the **Banking Act** are clear and if Parliament intended ECAMC to enjoy the rights of a previously licensed financial institution or a financial institution whose licence had been revoked, it would have said that. He relied on the case of **Smith v Selby**,² in advancing this argument. He directed this Court to the pronouncements of Sir Dennis Byron,

² [2017] CCJ 13 (AJ); (2017) 91 WIR 70.

President of the Caribbean Court of Justice (“CCJ”), as he then was, who stated that Parliament’s intention ‘are also discerned from the words it uses’.

- [13] Dr. Dorsett asserted that the Anguillan case **National Bank of Anguilla (Private Banking and Trust) Limited (in administration) and another v National Bank of Anguilla (in receivership) and others**³ is not instructive on the issue as to whether there is an automatic stay pursuant to section 144(1)(c) as the case does not speak to the effect of section 144(1)(c) in the circumstances where a receiver has been appointed to an institution that has no licence.
- [14] The crux of his submission is that based on the definitions provided for by section 2 of the **Banking Act**, ABI Bank cannot be termed a “licensed financial holding company” or “licensed financial institution” since its licence was revoked at the time of the claim. To bolster his argument, Dr. Dorsett quoted **Bennion on Statutory Interpretation**⁴ as authority for the proposition that statutory definitions are provided to “clarify or avoid potential doubts as to the meaning of a term”.
- [15] Finally, Dr. Dorsett stated that revocation of licence is not simultaneous with receivership and illustrates that a receiver may be appointed prior to revocation of a licence, as in the case before this Court or after revocation of licence. He also argued that a receiver may be appointed in absence of a licence. He therefore argued that the judge was wrong to stay the Maynards’ claim and urged this Court to set aside the learned judge’s order.

Submissions on behalf of Eastern Caribbean Asset Management Corporation Ltd (as receiver of ABI Bank Ltd)

- [16] Learned counsel, Ms. Kamilah Roberts, said that the gravamen of her submissions is that the Maynards’ appeal is based on a fundamentally flawed interpretation of the relevant sections of the **Banking Act**. Ms. Roberts

³ (2018) 93 WIR 277.

⁴ Bennion on Statutory Interpretation (7th edition, LexisNexis Butterworths, 2019). p. 471.

contended that in order to fully understand section 144(1)(c) it is necessary to examine the other relevant sections of the **Banking Act**. In support of her proposition, Ms. Roberts sought to rely on **Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited**.⁵ She posited that from the aforementioned case, the Court of Appeal summarised the proper approach to questions of statutory interpretation which is to consider the other relevant provisions of an act and to find the context of the section under review. She argued that it was necessary to consider other relevant provisions of the **Banking Act** and in particular the provision of Part X of the **Banking Act** which sets out the provisions governing receivership and compulsory liquidation of financial institutions.

- [17] Ms. Roberts submitted that based on consideration of sections 138(1) and (2), sections 140(1), (3) and (4), section 142 and section 144, it is clear that the **Banking Act** mandates upon appointment of a receiver, the banking licence of the financial institution be revoked.
- [18] Ms. Roberts opined that, in relation to “licensed financial institution”, the section must be interpreted as meaning a “formerly” licenced financial institution as the **Banking Act** does not contemplate that a financial institution will continue to be licenced to carry on banking business after the appointment of a receiver. In further explaining, she said that the **Banking Act** specifically mandates in section 140 that the banking licence be revoked upon the appointment of a receiver.
- [19] Ms. Roberts said that the implication of the word “formerly” is a necessary, obvious and proper implication which must be read into the relevant section of the **Banking Act** as it is one which necessarily follows from the express provisions of the statute construed within the purpose as well as the context of the legislation. Ms. Roberts relied on **Bennion on Statutory Interpretation** to support her argument that the court must give consideration to the context

⁵ BVIHCVAP2016/0013 (delivered 30th May 2018, unreported).

relevant to the provision so that the definition of “licensed financial institution” in the interpretation section of the **Banking Act** cannot displace the effect of the substantive provisions which stipulate that the stay of proceedings is applicable to financial institutions whose licences have been revoked at the start of the receivership.

[20] Ms. Roberts submitted that the Maynards’ interpretation would render the entire statutory regime which governs receiverships of financial institution ineffective. She further submitted that section 144(1)(c), which mandates that all legal proceedings against financial institution be stayed, pending leave of the court, is critical in prohibiting a floodgate of litigation from depositors and creditors which could threaten to deplete the resources of the receivership and undermine the operations and functioning of receivership.

[21] Additionally, Ms. Roberts emphasised that, the proposed interpretation given by the Maynards offend the statutory rule of interpretation. Relying on **Bennion on Statutory Interpretation**, she stated that an interpreter must construe the legislation in a way to implement rather than defeat the legislative purpose. She argued that the interpretation put forward by the appellants would mean that the entire receivership regime, including the stay provision in section 144(1)(c) would not apply to any financial institution under receivership as all financial receiverships would have been subject to the revocation of their licence.

[22] In addition, Ms. Roberts argued that the appellants’ reliance on **Smith v Selby** is misplaced as the rigid and flawed interpretation put forward by them is not in fact what the judgment supports. Ms. Roberts pointed out that at paragraph 9 of Sir Dennis Byron’s judgment that the CCJ stated:

“The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, coupled with the restraint to avoid imposing changes to conform with the judge’s view of what is just and expedient...”.

- [23] In concluding, Ms. Roberts stated that the appellants' proposed interpretation should be rejected, and the appeal should be dismissed.

Discussion

- [24] I will now refer to the relevant provisions of the **Banking Act**.
- [25] A licensed financial institution is defined in the interpretation section of the **Banking Act** as "any person or incorporated entity licensed to conduct banking business under this Act". A licensed financial holding company means a "holding company of a licensed financial institution licensed under this Act".
- [26] Section 138 outlines the grounds on which the ECCB may appoint a receiver for a licensed financial institution or a licensed financial holding company.
- [27] Section 140(1) stipulates that the ECCB should provide immediate notice to the chairman of the Board of Directors of the licensed financial institution or licensed financial holding company regarding the appointment of a receiver. Section 140(2) states that the appointment of a receiver becomes effective as at the date of issuance of the notice unless the said notice states otherwise. Section 140(3) mandates that the receiver shall post a notice announcing the revocation of licence and appointment by the ECCB of a receiver in each office of the licensed financial institution or licensed financial holding company and publish same in the Gazette and at least one local newspaper. This notice should specify the effective date and time and outline the procedures and timeframes for depositors, creditors and stakeholders to present their claims against the financial institution to the receiver.
- [28] Section 142 provides for the general powers of a receiver. Subsection (1) in particular reads as follows:
- "Upon appointment the receiver shall become the sole legal representative of the licensed financial institution or licensed financial holding company, and shall succeed to all the rights, titles, powers and

privileges of the licensed financial institution or licensed financial holding company and its shareholders, directors and officers.”

[29] Section 144 concerns the effects of receivership and in so far as being material to this appeal, stipulates:

“(1) Upon and after appointment of a receiver:

...

(c) all legal proceedings against the licensed financial institution or licensed financial holding company are stayed and a third party shall not exercise any right against the licensed financial institution’s or licensed financial holding company’s assets without the prior leave of the court unless the court directs otherwise;

...”

[30] At the heart of the appeal is the meaning or construction that should be accorded to the relevant statutory provisions in view of a statutory definition which seems to be inconsistent with the clear wording of the statute. In interpreting statutes, the court has to give regard to the intention of Parliament when the specific act was passed. The law, as time has passed, has come to recognise that the process of statutory interpretation is more nuanced and has since moved away from the strict and literal approach, where applying that interpretation would produce an absurd and unjust result. Where this is the case, the court may apply another rule to give effect to Parliament’s intention. The House of Lords in the seminal decision of **Pepper v Hart**⁶ enunciated the modern approach on statutory interpretation; that is, the purposive approach:

“The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of the legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.”

⁶ [1993] A.C. 593, p. 617.

[31] This approach to statutory interpretation has found expression in a long stream of jurisprudence. In **Global Education Providers Inc. v The Honourable Petter Saint Jean et al**⁷ this Court observed:

“The literal rule stipulates that in interpreting or construing an Act of Parliament, if the words are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words are not to be read in isolation of colour and context.”

[32] In **Douglas (Clayton) v The Police**,⁸ Sir Vincent Floissac, the then Chief Justice, observed:

“The function of the court in relation to a statute is to interpret the statute by ascertaining the legislative intention in regard thereto. That legislative intention is an inference drawn from the primary meanings of the words and phrases used in the statute with such modifications of those meanings as may be necessary to make them consistent with the statutory context.”

[33] The learned Chief Justice, very recently in **Asiyah Grant v Javier Maduro**,⁹ applied the purposive construction in ascertaining whether or not section 11A(1) of the **Motor Vehicle Insurance (Third-Party Risks) Ordinance**¹⁰ (“Ordinance”) imposed a 3 year limitation on all actions for injury or damages caused by motor vehicles required to be insured under the **Ordinance**. The learned Chief Justice, having examined the context, object and purpose along with the conjoint effect of other provisions, found that:

“...it is evident that the MVIO does not intend to regulate actions arising outside the third-party/insurer relationship created by the MVIO, and which cannot be commenced, or for which no provision was made under the Act. Actions which are commenced or maintained otherwise than under the provisions of the MVIO, and which do not pertain to the third-party/insurer relationship, therefore fall outside the purview of its provisions. It follows from the above that section 11A(1) ought not to be taken as imposing a limitation period in respect of all possible actions arising from injuries or damage caused by motor vehicles required to be insured, as the MVIO does not purport to regulate all

⁷ DOMHCVAP2012/0009 (delivered 4th May 2018), p.2.

⁸ (1992) 43 WIR 175.

⁹ BVIHCVAP2019/0001 (delivered 13th November 2019, unreported).

¹⁰ Chapter 242 of the Revised Edition 1991 of the Laws of the Virgin Islands.

possible actions. Rather, section 11A(1), interpreted in light of the object and purpose of the MVIO, intends to set a limitation period in respect of actions which are commenced and for which provision is made under the provisions of the MVIO.”

[34] The learned authors of **Bennion on Statutory Interpretation**¹¹ have expressed the nature of this approach in this way:

“A purposive construction of an enactment is one which gives effect to the legislative purpose by –

- (a) Following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
- (b) Applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in this Code called a purposive-and-strained construction).”¹²

[35] The common thread running through these authorities is that the court, in interpreting statutes, ought to give effect to the intention of Parliament. Where the words read in their plain and literal sense and in the full legislative context accord with the legislation’s object and purpose, then there is no need to go beyond their ordinary meaning. If the application of the literal rule would produce an undesirable and absurd result, then the court is permitted to apply a purposive construction to enable the object and purpose of the legislation to be fulfilled.

The object and purpose of the Act

[36] In order to determine whether the learned judge erred in concluding that section 144(1)(c) of the **Banking Act** was applicable to ECAMC and granting a stay of proceedings pursuant to same, the relevant statutory provisions must be examined. This brings me now to consider whether, for the purposes of section 144(1)(c), ABI Bank, by its receiver ECAMC, is a “licensed financial institution” or a “licensed financial holding company” noting that the revocation of the banking licence had occurred prior to the claim.

¹¹ Oliver Jones: *Bennion on Statutory Interpretation* (6th edn, Lexis Nexis) para 304, p. 846.

¹² A purposive-and-strained construction is one which applies a strained meaning where the literal meaning is not in accordance with the legislative purpose. The term ‘purposive construction’ is usually employed by judges in this sense. See: Oliver Jones: *Bennion on Statutory Interpretation* (6th edn, Lexis Nexis) p. 855.

- [37] I pay regard to sections 138, 140, 142 and 144 of the **Banking Act**. In so doing it is important to bear in mind the legislative scheme of the **Banking Act**. Equally important is the object of the **Banking Act**. In my view, the object and scheme of the **Banking Act**, in relation to receiverships of financial institutions are clear. Section 144(1)(c) creates a protection against legal action in relation to banks in receivership. The clear object and scheme are to allow the receivers to fulfil their role without legal interruption. The interpretation contended for by the appellants would clearly lead to an absurdity and undermine the entire statutory regime which govern receivership of financial institutions. In fact, it would have the effect of unravelling and undermining the entire statutory framework of the **Banking Act** and would make it toothless in relation to institutions whose licences have been revoked.
- [38] In light of the aforementioned object and purpose, in relation to financial institutions, it is clear that the **Banking Act** was not intended to be restricted to institutions that had licences. The **Banking Act** does not contemplate that a financial institution would continue to hold a licence to carry on banking operations after the appointment of a receiver. To say that section 144(1)(c) does not apply to institutions in receivership would be illogical and absurd. Section 140, in very clear language, mandates the revocation of a banking licence upon the appointment of a receiver.
- [39] If the interpretation advanced by the Maynards were accepted, it would lead to the absurd result that once a bank loses its licence it would automatically lose the protection from the statute that is afforded by section 144(1)(c). I do not share this view. To require the receiver to have a licence to be afforded protection under the **Banking Act** would in effect mean that section 144(1)(c) would not afford any protection to any financial institution under receivership as all financial institutions under receivership would have their licence revoked automatically. This would run against the meaning of the clear several statutory provisions

which indicate that the legislature intended to provide for a comprehensive legislative scheme. Accordingly, I am not of the view that Parliament's real intention would have been accurately reflected if the interpretation proposed by the appellants were accepted.

The Interpretation Section

[40] The aim of statutory definitions is to avoid frequent repetitions when describing the subject matter to which the word or phrase is intended to apply. These definitions are often found in the interpretation section of a statute and are to be understood and used for the purpose of that particular Act. However, the limitation to this application is summarised by the learned authors of **Bennion on Statutory Interpretation** as follows: "Whether it is so stated or not, a definition does not apply if the contrary intention appears from the Act in which the defined term is used. Such a contrary intention may apply to a part only of a definition". This principle has been codified in section 40 of the **Interpretation Act**¹³ which provides that:

"(1) Definitions or rules of interpretation contained in an enactment apply to the construction of the provisions of the enactment that contain those definitions or rules of interpretation, as well as to the other provisions of the enactment.

(2) An interpretation section or provision contained in an enactment shall be read and construed as being applicable only if a contrary intention does not appear in the enactment." (Underlining supplied)

[41] In view of the principles discussed above on the purposive approach to statutory interpretation, I am of the view that the appellants' reliance on the definition of a 'licensed financial institution' or 'licensed financial holding company' in the **Banking Act** is of no consequence. The succinct formulation of the principle in **Bennion on Statutory Interpretation** that a statutory definition does not apply where the contrary intention appears is applicable to the appeal at bar. I do not hold the view that the words in the definition of the statute could override the clear meaning of the several provisions of the statute. This would lead, in my

¹³ Cap 224 of the Laws of Antigua and Barbuda.

view, to the absurd result that, depositors, creditors or any other party with a legitimate claim would be allowed to claim or bring an action for litigation against the receiver, which would hinder the process of receivership. Parliament, having regard to the object and purpose of the **Banking Act** in creating a statutory regime governing receivership of financial institutions, could not have intended this, since it would defeat the main purpose of the receivership.

[42] As stated earlier, the court must interpret the legislation literally unless that literal interpretation would lead to an absurdity. In this case, where the definition section seems to support otherwise than the purposive meaning of the specific statutory provision of the Act, the latter should be interpreted to give effect to the purpose and object of the **Banking Act**, which is to bring the bank under the supervision and control of the receiver. An examination of section 144(1)(c) and the entire statutory framework governing receiverships of banks leads to the ineluctable conclusion that the protection is engaged upon the appointment of the receiver and therefore, the appellants' proposed interpretation must be rejected. It could not have been the intention of Parliament that receivers have no protection against litigation, simply because the bank no longer had a licence due to its revocation. It would be anomalous to deny the bank the protection which the legislature intended merely because it no longer had a licence. To conclude otherwise would be at clear variance with the legislative intent of Parliament. In this regard, the principles that were stated in **Global Education Providers Inc v The Honourable Petter Saint Jean et al** and **Asiyah Grant v Javier Maduro** are applied.

[43] From all that I have said, it is clear that I agree with the submissions of Ms. Roberts and state that the learned judge did not err in staying the proceedings, neither did the learned judge err in holding that the ECAMC, for the purposes of the **Banking Act**, was entitled to protection under section 144(1)(c). I also agree with Ms. Roberts' submissions in relation to **Smith v Selby** and apply them to the case at bar. Equally, I agree with Ms. Roberts that the definition section of the

Banking Act cannot be used to render the other provisions of the statute worthless. It is evident that, as argued by Ms. Roberts, “formerly” must be read into the definition section in order to make the legislation workable in relation to banks that are in receivership.

[44] Accordingly, the appeal fails and the decision of the learned judge is affirmed.

Costs

[45] The ECAMC was successful in the lower court and is now successful in this appeal. I am of the view that costs in the court below should be awarded to the ECAMC to be assessed if not agreed within 21 days of the date of this judgment. On this appeal, ECAMC shall have costs which are two-thirds of the costs assessed in the lower court, if not agreed within 21 days of the date of this judgment.

Conclusion

[46] The learned judge properly construed the legislation and correctly applied the purposive approach in giving effect to section 144(1) of the **Banking Act** to ECAMC. The judge gave effect to Parliament’s intention, in staying the Maynards’ claim. The definition section of the **Banking Act** may at first glance seem to conflict with the clear words of the relevant statutory provisions and the ethos of the legislature scheme; however, the several statutory provisions which specifically address the case at bar governs the case at bar.

[47] Interpreting the legislation literally is in conflict with the clear object and purpose. Such an interpretation would lead to an absurdity and undermine the legislative scheme. I am fortified in my view that that is contrary to the intention of Parliament. There is no doubt that the purpose of the legislation is to protect the financial institution and the receivership process from litigation and that was the clear intention of Parliament. To hold otherwise would make a mockery of the

legislative regime on receivership as provided in section 144(1)(c) of the **Banking Act** – it would undermine the efficacy of the **Banking Act**.

Disposition

- [48] For the above reasons, I would dismiss the Maynards' appeal and affirm the learned judge's decision.
- [49] I would award costs to ECAMC in the court below to be assessed if not agreed within 21 days of this judgment.
- [50] On appeal, the Maynards shall bear the ECAMC's costs, which are to be two-thirds of the costs assessed in the lower court, if not agreed within 21 days of this judgment.
- [51] I gratefully acknowledge the assistance of learned counsel.

I concur.
Davidson Kelvin Baptiste
Justice of Appeal

I concur.
Gertel Thom
Justice of Appeal

By the Court

Chief Registrar