

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS
IN PERSON

Monday 20th April 2026 – Friday 24th April 2026

JUDGMENTS

Case Name:

Everton Welch

v

The Attorney General

**[ANUHCVAP2021/0011]
(Antigua and Barbuda)**

Date:

Monday, 20th April 2026

**Coram for
delivery:**

**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
(via zoom):**

Appellant: Dr. David Dorsett

**Respondent: Ms. Chandera Codrington holding papers for Mrs.
Carla Brookes-Harris**

Issues:

**Civil appeal - Criminal law - Trial - Sentencing -
Absence of defendant - Constitutional law - Section
15(2) of the Constitution of Antigua and Barbuda -
Right of defendant to be present at trial -
Circumstances in which trial can properly take place
in absence of defendant - Appellate restraint - Appeals
against findings of fact - Whether the trial judge erred
in finding that the appellant had consented to trial in
his absence - Whether the accused received a fair trial**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. There is no order as to costs.**

Reason:

- 1. An accused person has the right to be present at his trial, which is a component of the right to a fair trial. However, a judicial officer has a discretion whether to commence or continue a trial in the absence of the accused. In exercising this discretion, fairness to the defendant is of prime importance. The judge must have regard to all the circumstances of the case including the nature and the circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear. The critical question on appeals of this nature is whether the appellant received a fair trial.**

R v Hayward [2001] 3 WLR 125 followed; Darryl Frett v The Commissioner of Police BVIMCRAP2022/0002 (delivered 6th June 2024, unreported) followed; R v Hales [1924] 1 K.B. 602 followed; R v Jones (Anthony Williams) [2002] UKHL 5 applied.

- 2. An appellate court should only overturn a trial judge's findings of fact if they are plainly wrong, meaning that no reasonable judge would have reached the original decision; not how strongly the appeal court disagrees with it. Unless there is strong evidence to the contrary, appeal courts assume the trial judge considered all the evidence, not mentioning specific evidence doesn't mean it was ignored. A trial judge's factual findings shouldn't be evaluated by whether their judgment evenly summarizes the evidence,**

the weight given to evidence is for the judge to decide. An appeal court can only set aside a judgment for lack of balanced consideration if the conclusion is irrational. Judgments need not be perfectly worded, and appeal courts should avoid overanalysing them like statutes or contracts. When findings of fact are derived entirely or almost entirely from undisputed documentary evidence, appellate courts are in just as strong a position as the trial judge to evaluate those facts and draw inferences and the appellate court may intervene more readily, as opposed to situations where credibility and reliability of witnesses are central issues. Therefore, where the evidence is unchallenged and documentary, the spectrum shifts towards greater appellate scrutiny and less deference to the trial judge's evaluation.

Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21 applied; Dr. Keith Rowley v Christo Gift and another [2025] UKPC 37 followed; Kwok Kin Kwok v Yao Juan [2022] UKPC 52 applied.

3. The judge erred in finding that the appellant had consented to trial in his absence. Section 15(2)(f) of the Constitution requires the accused's own consent to the conduct of criminal proceedings in his absence. Such consent must be informed and cannot be inferred merely from the presence of counsel or from counsel's failure to object, particularly where there was no evidence that the accused knew, or had the means of knowing, that the proceedings would take place on the relevant date.

Section 15(2)(f) Constitution Order 1981 of Antigua and Barbuda applied.

4. On the unchallenged affidavit evidence, the appellant was unaware that judgment would be delivered and could not therefore have

given informed consent or waived his constitutional right to be present. The finding that consent could be inferred was unsupported by the evidence and was plainly wrong.

5. However, the absence of consent was not determinative. The critical question was whether, in all the circumstances, the appellant received a fair trial. As the only matter outstanding was the delivery of a reserved judgment on sentence, all submissions had already been fully ventilated in the appellant's presence, and experienced counsel attended and raised no objection, the appellant's interests were adequately safeguarded. The delivery of judgment in his absence did not render the proceedings unfair. Thus, while the appellant's right to be present under section 15(2)(f) was not waived, no breach of the constitutional guarantee of a fair trial was established.

Case Name:

MBS Software Solutions Ltd

v

[1] Matthew Paget

[2] Reid Zuplo

[BVIHCMAP2024/0012]

(Territory of the Virgin Islands)

Date:

Thursday, 23rd April 2026

**Coram for
delivery:**

**The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

**Appearances
(via zoom):**

Appellant: Mr. Andre McKenzie

Respondents: Ms. Tamara Cameron

Issues: Commercial Appeal – Service out of the jurisdiction – Non-party costs order – Whether the court has jurisdiction to permit service of a non-party costs application out of the jurisdiction – Whether rule 7.14 of the Civil Procedure Rules, 2000 (“CPR 2000”) provides independent basis for service out – Requirement for prior permission to serve claim form out of the jurisdiction – Joinder of non-party – Whether application for non-party costs order constitutes a claim – Ratio decidendi and obiter dicta – Conflicting decisions of the Court of Appeal – When the court may depart from its own decisions –Section 50(1) Supreme Court of Judicature (Consolidation) Act 1925 – Transitional provisions – Civil Procedure Rules (Revised Edition) 2023 (“CPR 2023”) - CPR 2000 vs CPR 2023 – Whether the court may exercise discretion to apply new rules –Whether interlocutory hearing constitutes a “trial date” under Part 75 of CPR 2023

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The Respondents are awarded costs to be assessed by a judge of the Commercial Court if not agreed within 21 days.

Reasons:

1. The Court of Appeal in Halliwell Assets Inc v Hornbeam Corporation and Vadim Shulman allowed the appeal on the basis that the judge below failed to consider whether the non-party should first be joined and remitted the matter for determination on the merits; it did not decide anything beyond that. The Court’s statements concerning the procedure for serving a non-party costs application out of the jurisdiction, including its observations on CPR rule 7.14, were not necessary for its decision, were not part of the ratio decidendi and were clearly obiter and therefore not binding on Webster J (Ag.). In identifying the ratio decidendi, the

Court applied the established principles that only propositions forming a necessary step in the reasoning are binding.

Youngsam v The Parole Board [2019] EWCA Civ 229 applied, Finzi v Jamaican Redevelopment Foundation Inc [2023] UKPC 29 applied; White v Alder and Anor [2025] EWCA Civ 392 applied; Halliwell Assets Inc v Hornbeam Corporation and Vadim Shulman BVIHCMAP2015/001 (delivered 12th October 2015, unreported) considered.

- 2. Rule 7.14 of CPR 2000 is only engaged in proceedings where permission to serve the claim form outside of the jurisdiction had been given and it is not sufficient that the claim form qualifies for service out of the jurisdiction; rather, there must be an actual order for service of the process outside the jurisdiction which is what engages the court's jurisdiction over the non-party outside the jurisdiction. To the extent that Halliwell suggested that it was sufficient for the claim form merely to "qualify" for service out, that approach is inconsistent with the later decision in Convoy Collateral Ltd v Cho Kwai Chee. In those circumstances, the Court was entitled to prefer the later authority.**

Convoy Collateral Ltd v Cho Kwai Chee BVIHCMAP2016/0030 (delivered 30th March 2020, unreported) followed; Young v Bristol Aeroplane Co Ltd [1944] KB 718 applied; Halliwell Assets Inc v Hornbeam Corporation and Vadim Shulman BVIHCMAP2015/001 (delivered 12th October 2015, unreported) considered.

- 3. While the court's jurisdiction to make a non-party costs order is founded in statute, namely section 50(1) of the Supreme Court of Judicature (Consolidation) Act 1925, the procedural mechanism for engaging jurisdiction over a non-party outside the jurisdiction is governed strictly by Part 7 of CPR 2000. The court has jurisdiction to serve a non-party costs application out of the jurisdiction provided that the proceedings were initiated by a claim form**

for which permission has been given to serve the defendant outside the jurisdiction; it is insufficient that the claim form merely qualifies for service out of the jurisdiction. In the absence of such prior permission, the court has no jurisdiction over the non-party and service of the application is invalid.

Section 50(1) of the Supreme Court of Judicature (Consolidation) Act 1925 (15 & 16 Geo. 5. c. 49) applied; Rules 7.10 and 7.14 of the Eastern Caribbean Civil Procedure Rules 2000 applied; *Convoy Collateral Ltd v Cho Kwai Chee* BVIHCMAP2016/0030 (delivered 30th March 2020, unreported) followed.

4. The application before Jack J (Ag.) sought permission to serve the non-party costs application and any other relevant documents out of the jurisdiction. Properly construed, that application was plainly not an application for permission to serve the claim form out of the jurisdiction, and the order made did not grant such permission. The absence of any express reference to the claim form, and the form and context of the order, confirm that no permission to serve the claim form was either sought or granted. Accordingly, the requirement in CPR rule 7.14 for prior permission to serve the claim form was not satisfied.

Rules 7.5 and 7.6 of the Eastern Caribbean Civil Procedure Rules 2000 applied.

5. The validity of the order granting permission to serve out had to be determined by reference to the rules in force at the time the order was made, namely CPR 2000. The judge was correct to apply the Old Rules in determining the set-aside application. Further, the court could not exercise any discretion, whether under CPR 2023 or otherwise, to alter the applicable procedural regime so as to confer jurisdiction over the respondents. As the learned judge correctly held, “discretion should not be used to create jurisdiction, especially the court’s

exorbitant jurisdiction to serve foreigners outside the jurisdiction.”

Eastern Caribbean Civil Procedure Rules 2000 applied; Part 75 and rule 75.4 of the Eastern Caribbean Civil Procedure Rules 2023 (Revised Edition) considered.

Case Name:

Lim Yew Cheng

v

Guanghua SS Holdings Limited

**[BVIHCMAP2024/0034]
(Territory of the Virgin Islands)**

Date:

Friday, 24th April 2026

**Coram for
delivery:**

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of
Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

**Appearances
(via zoom):**

Appellant: Mr. Guy Olliff- Cooper

Respondent: Mr. James Petkovic

Issues:

Commercial Appeal – Appeal against decision of the learned judge to dismiss adjournment application and an application for a stay of proceedings – Application to adduce fresh evidence – Application to amend notice of appeal – Ladd v Marshall test – Whether the evidence the appellant/applicant sought to adduce was in existence at the time of the hearing in the court below – Whether there are exceptional circumstances that warrant adducing the fresh evidence – Whether the learned judge failed to apply the test for the grant of a case management stay of proceedings - Whether the Hong Kong judgment is final – Whether the judge was wrong not to grant the stay application because the

purpose of the enforcement proceedings is to enforce the Hong Kong judgment against the appellant – Whether the judge was wrong to dismiss the adjournment application on the basis that it was so clear that the stay application should be dismissed that nothing counsel for the appellant could say, and none of the evidence that had been filed, could make any difference to the outcome

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The preliminary applications and the appeal are dismissed.**
- 2. The interim stay of proceedings granted by Ventose JA on 21st January 2025 is lifted.**
- 3. The appellant shall pay the respondent's costs to be assessed by a judge of the Commercial Court if not agreed within 21 days of the delivery of this judgment.**

Reasons:

- 1. To justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.**

Ladd v Marshall [1954] 1 WLR 1489 applied.

- 2. On the first condition, the question is whether the evidence of the fraud proceedings and the new proceedings could not have been obtained with reasonable diligence. It is not in dispute that the fraud proceedings were not on foot in Hong Kong at the time of the hearing before Mithani J, nor had Wallbank J granted leave to file the derivative claim. In that sense, the documents sought to be adduced were not available for consideration by Mithani J because those**

circumstances did not exist at the time of the hearing before him. A line of cases emanating from this Court has held that the first condition of Ladd v Marshall does not extend to evidence that did not exist at the time of the hearing in the court below.

WWRT v Carosan BVIHCP2022/0002 (delivered 20th July 2022, unreported) followed; Lam Wo Ping v Chen Jian Yun BVIHCP2023/0006 (delivered 20th August 2024, unreported) followed; Geminis Investors Limited v Goods Technology Starting international Limited BVIHCP2022/0020 (delivered 23rd August 2023, unreported) followed.

3. The appellant's reliance on the Court of Appeal's decision in Chia Hsing Wang v Real Assets RA does not avail. Chia is distinguishable since even though it stands for the proposition that in exceptional circumstances, evidence that was not in existence at the time of the hearing may yet be admitted as fresh evidence on appeal, the exceptional circumstance in that case was the judge's unilateral decision to perform independent research on the word "ninja" and to use the "Project Ninja" file name to draw negative inferences about the appellants' strategy, without notice or opportunity provided to the appellant to explain. This circumstance, which produced unfairness to the appellant, was of the judge's own making after arguments had concluded. There are no exceptional circumstances in the present case that would warrant extending the scope of the first condition of Ladd v Marshall to material that was not in existence at the time of the proceedings below. Similarly, the other cases relied upon by the appellant, namely Bilzerian and Staray Capital do not avail the appellant as they are also distinguishable from the present case. In the present case the appellant is the author and creator of the subsequent post-trial events on which they seek to rely. It was Mr. Ma, the legal owner of Xeno, who initiated the application for

leave to bring derivative proceedings before Wallbank J and it is the appellant who subsequently initiated the fraud proceedings in Hong Kong. That is a feature that is not present in either Bilzerian or Staray Capital. In those cases, the subsequent events or evidence did not materialize at the strategic instigation of the applicants. It would seem to be undesirable as a matter of principle to extend the scope of the first condition of Ladd v Marshall so as to facilitate a party seeking leave to adduce fresh evidence on appeal, to orchestrate, create or bring about changed circumstances and then to pray in aid his very own creation.

Chia Hsing Wang v XY and Others BVIHCMAP2022/0055 (delivered 6th June 2023, unreported) distinguished; **Adam Bilzerian et al v Terrence Byron et al SKBHCVAP2019/0032** (delivered 21st July 2020, unreported) distinguished; **Staray Capital Limited et al v Cha, Yang** (also known as Stanley) **BVIHCMAP2013/0009** (delivered 14th July 2014, unreported) distinguished.

4. With reference to the application to amend the notice of appeal, parties ought to present all arguments at trial and not save them for appeal. To introduce a new point on appeal, permission is needed, and a cogent explanation must be given for its omission below. New points of pure law may be allowed if they don't require additional evidence, but appellate courts are cautious, especially if further evidence would be needed or if insufficient notice to the other party would result in prejudice. Relevant considerations include: (i) whether there is a real prospect of the amended ground succeeding; (ii) the lateness of the application; (iii) the reasons for that lateness; (iv) the earlier history; (v) the need for an adjournment; (vi) the effect of the application on the litigants and the litigation generally.

Win Business (Caofeidan) Ltd v Anadarko China Holdings Company BVIHCMAP2022/0044

(delivered 5th July 2023, unreported) followed; Clarke v Lighting and Lamps [2016] EWCA Civ 5 followed.

- 5. In this case, the new ground of appeal and the material sought to be adduced as fresh evidence entails a voluminous body of evidence and therefore is not a situation where a pure point of law is being taken. The respondent complained, with justification, that the late filing of this material has not provided them with an adequate opportunity to properly consider the material and to respond with evidence of their own. Had this evidence been deployed below matters there may certainly have taken a different course because the judge would have had to consider all the evidence, including any adduced by the respondent. Further, no cogent explanation has been given why these proceedings could not have been instituted much earlier. It would be oppressive and unjust to expect the respondent to provide a fulsome response to the new ground on such short notice and without adequate opportunity to meet it. In these circumstances, the proper and just course, which is least productive of prejudice dictated that the application to amend the notice of appeal to add a new ground be dismissed.**
- 6. The nature of the decision under challenge in the appeal is a case management discretionary order in relation to applications to stay proceedings and to adjourn proceedings. To warrant intervention, the appellate court must be satisfied that: (1) in exercising his judicial discretion, the judge erred in principle either by failing to take into account the relevant factors under consideration or by taking into account or being influenced by irrelevant factors and considerations; and (2) as a result of this error or degree of error in principle, the judge's discretion exceeded the generous ambit within which reasonable agreement is possible and may therefore be said to be clearly or blatantly wrong. The test for a grant of a case management stay is whether it is in the interests**

of justice to grant a stay. The threshold is high and it is only in rare and compelling circumstances that it will be in the interests of justice to grant a stay on case management grounds to await the outcome of foreign proceedings.

Michel Dufour and Others v Helenair Corporation Limited and Employers International v Boston Life and Annuity Company (1996) 52 WIR 188 applied; Athena Capital Fund v Holy See [2022] 1 WLR 4570 applied.

7. While it is true that the judge did not expressly articulate the test to describe the matters he considered in deciding to dismiss the application, the factors which he identified are plainly relevant to that question. The judge was clearly of the view that the BVI proceedings were enforcement proceedings that were properly brought by Guanghua in relation to a Hong Kong judgment which had not been appealed and in respect of which no stay had been sought in Hong Kong. The judge determined that in those circumstances Guanghua should be entitled to pursue the enforcement of the judgment, which on the face of it appears to be regularly obtained and should not be deprived of the fruits of its judgment. He saw no reason why the appellant could not seek a stay of the Hong Kong judgment in Hong Kong where it was issued. It was open to the judge to find that the evidence in relation to these matters did not warrant a stay, especially given his clear finding that the Hong Kong judgment seemed to have been properly obtained, had not been appealed, and in respect of which no stay had been sought in Hong Kong. The judge also considered that there was no risk of inconsistent judgments being produced were the enforcement action to proceed.
8. To establish that a judgment is final, it must be demonstrated that the court issuing the decision conclusively and finally established the existence of the debt in question, making it

binding as *res judicata* between the parties in this country. At common law, a foreign judgment may be final and conclusive even though an appeal is actually pending in the foreign country where it was given. In the present circumstances, where the Hong Kong judgment has not been appealed, no application has been made to stay it, and where the reliefs sought in the 1976 proceedings do not seek to set aside the Hong Kong judgment, there was no reason to regard the Hong Kong judgment as not final and no reason why the judge could not proceed with the recognition and enforcement claim.

9. Further, the criticism that the judge did not give the appellant an opportunity to be heard on the stay application runs shallow and is unfair in the circumstances since no assistance was given to the judge in relation to this application. The skeleton arguments contained no substantive submissions in relation to the stay application. The only passing reference to it is at paragraph 3.2. which state, “additionally or alternatively, the claim should be stayed for numerous reasons,” and counsel for the appellant did not ask the judge to make any oral submissions on the stay application.

Bussoleno Ltd v Kelly [2011] IEHC 220 followed.

10. In relation to the adjournment application, the judge examined the reasons advanced for the adjournment as contained in the supporting affidavit of Mr. Goldblatt. The judge dismissed it because he did not think that an adjournment would affect the outcome, given the view he took of the evidence and its relevance to the central issue he had to decide. He identified this as whether to grant a stay; not to revisit the substantive claims already decided by the Hong Kong Court. The judge did not err in his understanding of his remit. His decision to dismiss the adjournment application cannot be described as plainly wrong. The appeal against his order on the adjournment application must also be dismissed.

APPLICATIONS AND APPEALS

Case Name:

**[1] ANUH20 LLC
[2] Charles Muszynski**

v

Millenium Funding Inc et al.

**[NEVHCVAP2025/0015]
(Saint Christopher and Nevis)**

Date:

Monday, 20th April 2026

Coram:

**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:

Applicants: Ms. Angela Cozier

Respondent: Ms. Edisha Greene

Issues:

Application for leave to appeal – Application for a stay of execution – Whether the claim is incurably defective and a nullity because it was brought in the wrong form (Form 1 instead of Form 2) and lacked a mandatory Statement of Truth as required by CPR 43.11, 43.12, 8.7(5), and 3.11 – Whether the court has jurisdiction to hear the matter given that the underlying foreign judgment was obtained in the USA, which is not a recognised jurisdiction under the schedule of the Foreign Judgment (Reciprocal Enforcement) Act Cap 3.13 – Whether the learned judge failed to apply Section 61(11) of the Nevis Limited Liability Ordinance, which prohibits the recognition or enforcement of certain foreign judgments against Nevis LLCs, and whether the 2nd Applicant is shielded from liability as a manager under Section 61 – Whether the award of US\$30,000.00 for security for costs was irrational or plainly wrong, specifically whether the judge erred by ignoring the mandatory calculation formulas in CPR

65.5 for a claim valued at US\$15,172,403.00 – Whether the continuation of the Worldwide Freezing Order and the refusal to grant a stay of execution constitute a breach of natural justice and the Applicants' constitutional rights, potentially rendering the appeal nugatory if they are forced to pay the judgment sum before the appeal is heard

Type of Order:

Oral decision with written reasons to follow

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The Notice of Application for leave to appeal is allowed in part, limited to the issue of the quantum ordered to be paid by way of security for costs. The applicants shall file and serve their notice of appeal in relation to this ground on or before 12th May 2026. The appeal shall proceed thereafter in accordance with CPR 62.**
- 2. The Notice of Application for leave to appeal in relation to the other intended grounds of appeal, namely, the challenge to the recognition and enforcement of a foreign judgment, the finality and conclusiveness of a foreign default judgment, the failure by the respondent to include a certificate of truth on its statement of claim, and the judge's failure to give reasons, is dismissed.**
- 3. The application for a stay of execution is dismissed.**
- 4. The applicants shall pay the respondent's costs of the stay application to be assessed if not agreed within 21 days.**
- 5. The Court will provide written reasons for its decision and the Chief Registrar will notify the parties when the decision is ready.**

Reasons:

Before the Court was an application for leave to appeal the Order of Thompson Jr J dated 15th May 2025 and

for a stay of execution pending the determination of that appeal.

Upon the Court being of the view that the intended appeal met the requisite threshold only in respect of the quantum of security for costs, the Court granted leave to appeal limited strictly to that specific ground. However, upon being further of the view that the remaining grounds concerning the recognition and enforcement of the foreign judgment, the finality of the default judgment, the absence of a certificate of truth, and the alleged failure to give reasons, lack the necessary merit for appellate review under CPR 62, and finding no sufficient basis to halt the enforcement of the existing order, the Court dismissed the application for leave on all other grounds and refused the application for a stay.

The Court promised to provide full written reasons for this decision in due course.

Case Name: **Hamilton Reserve Bank Limited**
v
SIBEW PTY Ltd
[NEVHCVAP2025/0028]
(Saint Christopher and Nevis)

Date: **Monday, 20th April 2026**

Coram: **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:
Applicant: **Ms. Nadia Chiesa with Ms. Iasha Usher**
Respondent: **Mr. Benjamin Drakes**

Issues: **Application for leave to appeal - Rule 17 of the Civil Procedure Rules (Revised Edition) 2023 - Whether the**

learned judge erred in granting interim relief to the respondent before a Claim Form was filed – Whether the learned judge took a fatally flawed view of the Court’s inherent jurisdiction in not requiring the respondent to issue and serve a Claim Form before the application was filed – Whether the learned judge erred in dismissing the transfer of funds to a third-party escrow agent in the US - Whether the learned judge erred in ordering the parties to participate in arbitration

Type of Order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

The application for leave to appeal is dismissed.

Reasons:

Before the Court was an application filed by Hamilton Reserve Bank Ltd (“the Bank”) on 19th November 2025 for leave to appeal the Order of the learned judge dated 29th August 2025 (“the Order”). By that Order, the learned judge directed the Bank to pay the sum of USD\$2,804,555 into Court within seven business days and further ordered the parties to submit their dispute to arbitration.

Background

This dispute involved a claim by Sibew Pty Ltd ("Sibew") for the return of USD\$2,804,555 held in its account at the Bank. Sibew sought interim relief on 28th April 2025, requesting that these funds be paid into court and that the parties proceed to mediation. The Bank subsequently closed the account and, with the stated approval of the Regulator of International Banking, transferred the funds to a third-party escrow agent at Wells Fargo Bank USA.

On 29th August 2025, the learned judge issued an order (the "Payment In Order") requiring the Bank to pay the

full USD2,804,555 into court within seven business days and attached a penal notice to ensure compliance. The judge also ordered the parties to proceed to arbitration, finding the existing mediation clause in their agreement unenforceable. The Bank's subsequent requests for leave to appeal were refused by the High Court, leading to the current application before the Court of Appeal.

Summary of Arguments

The Bank argued that its intended appeal has a realistic prospect of success based on several grounds:

First, Jurisdictional Errors: The Bank contended that the judge erred by granting interim relief (a payment into court) before any formal legal claim had been issued by Sibew on the basis that it was in the interest of justice to do so when there was no evidence of this.

Secondly, the bank challenged the judge's use of the court's 'inherent jurisdiction' to grant injunctive relief when such relief was not specifically sought in Sibew's original application.

Third, the judge erred in granting interim relief before a claim had been issued, without requiring Sibew to undertake to serve a claim form by a specified date, pursuant to rule 17.2(5) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 ("the CPR").

Fourth, Enforceability of Contractual Clauses: The Bank argued that the judge wrongly determined that the mediation clause (Clause 32) in the Customer Account Agreement was unenforceable. Furthermore, it contended that the judge erred by ordering the parties to arbitration—relief that SIBEW had not requested—without first requiring that they engage in the agreed-upon mediation, which is the order that was sought by SIBEW. In any event, it is said that the judge erred in failing to consider that SIBEW's account with

the bank has been closed and there is no further relationship between the Bank and its former customer.

Fifth, the Bank contended that the judge failed to give sufficient weight to the fact that the transfer of funds to a US escrow agent was approved and directed by its regulator. The Bank asserted that when it closed the applicant's account, it was simply complying with its regulatory mandate, and the judge therefore erred in finding that the bank's transfer of the monies to a third party escrow agent at Wells Fargo Bank in the USA did not relieve it of its liability to pay that sum to SIBEW, and therefore to pay the funds into court.

Discussion

The test for leave to appeal is well-established. CPR 62.2(8) mandates that for leave to appeal to be granted, an applicant must demonstrate that the appeal has a realistic prospect of success or there is some other compelling reason why the appeal should be heard. A 'realistic prospect' means a prospect that is more than merely fanciful, as articulated in *Othneil Sylvester v Faelleseje Civil Appeal No.5 of 2005 (delivered 20th February 2006) unreported*.

Where leave is sought to appeal the exercise of a judge's discretion the appellate Court is slow to interfere unless the judge failed to consider relevant factors or took into irrelevant and as a result committed an error in principle such that his decision was plainly wrong and outside the generous ambit within which reasonable disagreement is possible.

Analysis

The appellant complained that the judge went beyond the relief sought, which was the payment of a specified fund into court, and granted relief which was not sought. CPR 17.1(1) sets out a number of interim remedies which the court is empowered to grant. This

is not an exhaustive list as rule 17.1(3) provides that the court's power to grant any particular remedy is not affected by the fact that that remedy is not listed in paragraph (1). Rule 17.2 regulates the timing of such applications. Rule 17.3 sets out the manner in which they are to be made. Rule 17.4 contains provisions relating specifically to applications for interim injunctions and similar orders, while 17.5 regulates the general procedure relating to applications for interim payments. Rule 17.6 (1) lists the circumstances under which a court may make an interim payment.

Under Part 17 of the CPR, the court possesses a broad range of powers to grant interim remedies to protect the interests of parties before a final decision is reached.

Such interim remedies include an order for interim payment by a defendant under rules 17.5 and 17.6 on account of any damages or debt that the court may find the defendant liable to pay. The court may grant these remedies even if there has been no claim for a final remedy of that kind. In particular, rule 17.2 provides that the court may grant an interim remedy before a claim has been made only if (a) the matter is urgent; or (b) it is otherwise necessary to do so in the interests of justice. If an interim remedy is granted before a claim is issued, the court must require an undertaking from the claimant to issue and (unless otherwise directed) serve a claim form by a specified date. The procedure is that such applications must be made in accordance with the general rules for applications in Part 11 and must typically be supported by affidavit evidence.

Orders for Payment into Court

The Court considered that pursuant to rule 17.1 of the CPR, the court has specific powers to order payments into court as an interim measure. The court may make an order for a specified fund to be paid into court when

there is a dispute over a party's right to that fund: rule 17.1(1)(f).

Secondly, the court may make an order permitting a party seeking to recover personal property to pay a specified sum into court pending the outcome of the proceedings and upon the party doing so, the court may direct that the property be given up to that party pending the outcome of the proceedings: rule 17.1(1)(i) of the CPR.

While the Bank argued that the absence of a claim form is a jurisdictional bar, the Court noted that under the CPR, judges possess broad discretion to grant interim relief where the interests of justice require the preservation of funds. Furthermore, section 22 of the *Supreme Court Act of Saint Kitts and Nevis* empowers the court to grant any equitable or legal remedy in respect of any matter before it absolutely or on such terms and conditions as the Court deems just.

The Court's view was that the learned judge was clearly concerned with the unilateral removal of funds from the jurisdiction to a foreign escrow agent at a time when the court's determination was pending and the judge had notified the parties in advance of his intention to deliver his decision. The funds were transferred on the very day the judge had intended to deliver his decision. The Bank provided no reason for the course of action taken. The Bank's argument that it was 'complying with its regulator' does not absolve its contractual and fiduciary duties to its depositor, nor does it override the court's power to ensure funds under dispute are secured within the court's reach.

The Court noted that the exercise of the learned judge's discretion in this regard cannot be disturbed because it had not been shown to have been plainly wrong or outside the generous ambit within which reasonable disagreement is possible.

As it related to the judge's Order directing the parties to Arbitration, the Court considered that although the judge found the mediation clause unenforceable and substituted arbitration, this was on the basis that notwithstanding repeated requests by SIBEW to the Bank to appoint a mediator, the Bank failed or refused to do so and SIBEW could not compel the Bank to appoint a mediator. The Court expressed the view that the judge was therefore entitled to conclude that the mediation option was unenforceable in those circumstances and not a viable option. Thus, in those circumstances, the Court was of the view that the learned judge's decision to direct the parties to engage in arbitration was a proper exercise of discretion.

As it related to the complaint that there was a procedural irregularity in the judge's failure to direct SIBEW to issue and serve a claim form by a specified date in accordance with CPR 17.2(5), the Court held that while this deviated from the requirements of the rule it is not fatal; considering that the rule provides no consequence. The Court opined that this defect can be cured by a subsequent direction pursuant to CPR 26.9.

Conclusion:

For the foregoing reasons, the Court found that the Bank failed to meet the threshold for leave to appeal, that the Order of the learned judge was an exercise of judicial discretion aimed at maintaining the status quo and ensured that any eventual judgment in favor of SIBEW would not be rendered nugatory. The Court also found that the proposed grounds of appeal did not have a realistic prospect of success and accordingly the application for leave to appeal was dismissed.

Case Name:

Credit Info Limited

v

Fair Isaac Corporation

**[SKBHCVAP2025/0010]
(Saint Christopher and Nevis)**

Date: Monday, 20th April 2026

Coram: 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:

Appellant: Ms. Midge Morton

Respondent: Ms. Chante Francis holding a watching brief

Issues: Interlocutory Appeal - Whether the master's decision made on 30th September 2025 was so aberrant that it must be set aside when considered in the context of the master's earlier decision in July 2025 - Whether the master, by his July 2025 decision, was rendered functus officio on the issue of whether the court could make inquiries on affidavit evidence and find on a CPR Part 44 proceedings that Ms. Denise Garfield was a de jure or de facto officer or director of Credit Info Limited - Whether the master by his 30th September 2025 order, committed an error of law by failing to appreciate that the natural consequence of his 17th July 2025 decision was the dismissal of the Request for Oral Examination dated 4th November 2022, not an adjournment - Whether the master's 30th September 2025 order amounted to an abuse of the court's process, since inter alia, it could potentially result in the master setting aside his own 17th July 2025 judgment

Type of Order: Oral Judgment

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The matter is remitted to the High Court.
3. The appellant shall have its costs, to be assessed if not agreed within 21 days.

Reasons:

Upon the appeal coming on for hearing, the Court noted that the respondent had not filed any notice of opposition to the appeal nor skeleton arguments in opposition. The Court also noted the indication by Counsel for the respondent, Ms. Francis that the respondent did not intend to make any submissions on the appeal. In those circumstances, the Court having considered the written submissions of the appellant, the Court being of the view that, in so far as the issue of whether Ms. Garfield was an officer and whether that issue could be mitigated by CPR Part 44 proceedings, that issue was res judicata having regard to the master's earlier judgment in 17th July 2025. The appeal was accordingly allowed.

Case Name:

Deon & Associates

v

Gaston Barry dba Gasspree

[NEVHCVP2025/0020]

(Saint Christopher and Nevis)

Date:

Monday, 20th April 2026

Coram:

**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:

Appellant: Ms. Aymah George

Respondent: Ms. Emily Prentice-Blackett

Issues:

Interlocutory Appeal - Appeal against order setting aside judgment against the respondent - Whether the learned master failed to properly consider and/or apply the relevant principles of law - Whether the learned master erred in fact and in law in finding that the

respondent has a reasonable chance of success on the draft defence - Whether the learned master erred in finding that the respondent is not a proper party as defendant to the proceedings - Whether the learned master erred in finding that the cause of action is one against Gasspree Services Limited which is a separate legal entity and not against the respondent in his personal capacity - Whether the learned master erred 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 said company did not exist at the time the cause of action arose or at the time of service - Whether the learned master erred in finding that but for the fact of Gasspree Services Limited being struck off the Claim would have been brought against it - Whether the learned master erred in finding that the appellant had not supplied evidence of the respondent's acts which demonstrate that the respondent purported to trade on his own behalf and not on behalf of Gasspree Services Limited - Whether the learned master erred in fact in finding that the respondent corresponded with the appellant on behalf of the company Gasspree Services Limited - Whether 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 - Whether the learned master erred in finding that the appellant could advance its claim by applying to restore the company Gasspree Services Limited pursuant to section 484 (6) of the Companies Ordinance of Nevis so that a claim could be made against it

Type of Order:

Oral Judgment with written reasons to follow

Result/Order:

IT IS HEREBY ORDERED THAT:

- 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.**

4. The Court will provide written reasons for its decision and the Chief Registrar will notify the parties when the decision is ready.

Reasons:

Before the Court was an appeal against the Order of the learned Master dated 14th July 2025, by which the judgment entered against the respondent was set aside and the respondent was granted 14 days to file its defence. Having heard submissions from counsel for the parties, the Court determined that the appeal should be allowed. Accordingly, the Court allowed the appeal, set aside the order of 14th July 2025, and ordered that the appellant is entitled to costs, to be assessed if not agreed within 21 days. The Court further indicated that written reasons for its decision will follow.

Case Name:

DDM Properties Limited

v

Eustace Hobson

[SKBHCVAP2026/0001]

(Saint Christopher and Nevis)

Date:

Tuesday, 21st April 2026

Coram:

**The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose- Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Mr. Anthony Ross, KC with Ms. Nadia Chiesa

Issues:

Application for leave to appeal - Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 - Whether the court considers that the appeal would have a realistic prospect of success - Whether there are some other compelling reasons why the appeal should be heard

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for leave to appeal the decision of Gill J filed on 7th January 2026 is granted.**
- 2. The appellant shall file and serve its notice of appeal within 21 days of this order.**
- 3. The appeal shall proceed in accordance with the Civil Procedure Rules (Revised Edition) 2023.**

Reasons:

Before the Court was an application for leave to appeal the decision of Gill J, filed on 7th January 2026. The Court considered the decision of Gill J dated 17th December 2025; the affidavit of David Fletcher sworn and filed on 7th January 2026 in support of the application, together with the exhibits thereto; and the amended submissions filed on 9th April 2026.

In determining the application, the Court applied Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023, which provides that leave to appeal may be granted only where the appeal has a realistic prospect of success or there is some other compelling reason for it to be heard. The Court also considered the applicable principles set out in Othneil Sylvester v Faelleseje (Civil Appeal No. 5 of 2005, delivered 20th February 2006, unreported) and Harbour Club Ltd v McMillan Monroe dba Tropical Destination (SLUHCVP2023/0027, delivered 9th December 2024), in particular that the threshold requires more than an arguable appeal and demands a realistic prospect of success.

The Court was satisfied that this threshold had been met and accordingly granted leave to appeal.

Case Name:

Olrir Llewellyn Powell

v

Yvette Powell- Freeman

**[NEVHCVAP2021/0002]
(Saint Christopher and Nevis)**

Date: Tuesday, 21st April 2026

Coram: The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose- Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Michelle Slack-Clarke

Respondent: Mr. Eustace Nisbett

Issues: Application to strike out the appeal – Whether the appellant’s failure since filing the notice of appeal to take steps to prosecute the appeal, including failure to obtain the transcript pursuant to CPR 62.15, amounts to inordinate and inexcusable delay – Whether that delay constitutes a want of prosecution and an abuse of process within rule 26.3(1)(c) Civil Procedure Rules (Revised Edition) 2023 and the Court’s inherent jurisdiction – Whether the respondent has suffered prejudice by continued uncertainty, additional expense, and the prolonged failure of the appellant to comply with the order of the court below, no stay of execution having been granted pending appeal – Whether, given that the underlying proceedings commenced in 2015, the continued pendency of the appeal is contrary to the efficient administration of justice – Whether the appeal has any real prospect of success, having regard to the declaration of paternity made by the Magistrate’s Court, section 7(1)(d) of the Status of Children Act, and the appellant’s acceptance that he would account once paternity was established – Whether the appeal is procedurally defective by reason of its filing in NEVHCVAP rather than SKBHCVAP – Whether it is just and consistent with the overriding objective under CPR 1.1 that the appeal be struck out

Type of Order: Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The application to strike out the appeal filed by the appellant on 26th January 2021, is dismissed.
2. Each party shall bear their own costs
3. The appellant shall file the record of appeal within 45 days of the date of this order, and thereafter the appeal shall proceed in accordance with Part 62 of the CPR.
4. The Chief Registrar shall set down this appeal at the next sitting of the Court of Appeal in the State of St. Christopher and Nevis.

Reasons:

Before the Court was an application to strike out the appeal on the basis of delay and want of prosecution. The Court was satisfied that the appeal raised an issue as to the import and impact of section 7(2) of the Status of Children Act. The mere fact that the panel would be required to consider that issue, together with the matters arising on the strike out application, was sufficient to permit the appeal to proceed.

The Court then considered the complaint of delay. It was accepted that there had been a substantial delay following the filing of the notice of appeal. However, the Court considered rule 62.12 of the Civil Procedure Rules (Revised Edition) 2023 (CPR). Under this rule, the duty to prepare the record, including any transcript, rests initially with the court office, and time for the appellant to take the next procedural steps runs from service of notice that the record is available.

There was no evidence that the court office had prepared the record, and made the transcript available or served notice of availability on the appellant during the period complained of. Nor was there evidence that the appellant had been informed of any difficulty in preparing the record or directed to make alternative arrangements. In those circumstances, the Court was not prepared to attribute the entirety of the delay to the appellant.

The Court acknowledged that an appellant must pursue an appeal with diligence. Equally, the Court could not turn a blind eye to the obligations placed on the court office by the CPR. Where the procedural step required to move the appeal forward had not been shown to have occurred, it would be unjust to visit the full consequences of delay on the appellant.

Having regard to the issues raised regarding the interpretation and effect of section 7(2) of the Status of Children Act and the shared responsibility for delay the Court declined to strike out the appeal.

Case Name:

Kevin Hortswood

v

Adam Bilzerian

**[SKBHCVAP2025/0005]
(Saint Christopher and Nevis)**

Date:

Tuesday, 21st April 2026

Coram:

**The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose- Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Dexter Theodore, KC

Respondent: Ms. Derriann Charles

Issues:

Interlocutory Appeal - Preliminary point - Whether the appellant should be allowed to argue new points on the appeal as it relates to the nullity and limitation - Whether the learned master erred in the exercise of his discretion pursuant to rule 19.2(5)(b) of the Civil Procedure Rules (Revised Edition) 2023 ("CPR") by granting the order to substitute International

Investments Limited for the Claimant in light of the fact that the master did not have before him sufficient material on which he could determine that (1) the interests or liabilities of the Claimant had in fact passed to the new party; or that (2) it could resolve the matters in dispute in the proceedings more effectively by making the order for substitution - Whether the master failed in the exercise of his discretion by granting the order to substitute without considering that the “contract of exchange” submitted was based on false pretenses such that the exchange was not bona fide and that there was therefore no evidence as to whether the precondition in CPR 19.2(5)(b) had been met - Whether the master erred in law in finding that the issues in the proceedings could be resolved more effectively by substituting International Investments Ltd for Adam Bilzerian and / or that the interests or liability of Adam Bilzerian had passed to International Investments Limited - Whether the learned Master in making the substitution order failed to consider the appellant would be prejudiced by the substitution order because it usurped the prior Order of Justice Royce C. Lamberth and takes away the fruits of the appellant’s endeavours in the US Court - Whether the learned Master failed to consider that the existing claimant was the same controlling mind as the proposed party to be substituted

Type of Order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

1. On the preliminary application, the Court having had sight of the authorities relied on by learned counsel for the appellant in particular Times Travel (UK) Ltd and anor v Pakistan International Airlines Corporation [2022] EWCA Civ 415 and having heard the oral submissions of both the appellant and the respondent, the Court determined that the appellant would not be permitted to argue the new grounds regarding nullity and limitation as it related to the order for substitution, the Court being satisfied that it was

open to the appellant to make any application it wished to the court below on those issues upon the disposal of this appeal.

2. Judgment is reserved on the substantive appeal.

Reasons: N/A

Case Name: Abdul Ahmed

v

Fern Hanley

[NEVMCVAP2023/0002]
(Saint Christopher and Nevis)

Date: Tuesday, 21st April 2026

Coram: The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose- Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Craig Tuckett

Respondent: Mrs. Emily Prentice-Blackett

Issues: Magisterial Civil Appeal - Trespasser or Tenant - Magistrate Code of Procedure Act Cap. 3.17 - Small Tenement Act Cap 10.18 - Evidence Act Cap. 3.12 - Whether the learned magistrate erred in law in failing to uphold the tenancy that existed between the parties - Whether the learned magistrate failed to acknowledge that it was not in her jurisdiction to determine legal or equitable interest of the property to others - Whether the learned magistrate erred in failing to assess and apply mense profit to the respondent

Type of Order:

Adjournment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. A personal cost order is made against Counsel for the appellant in the sum of \$750.00 to be paid to the respondent within 21 days for failing to be appropriately attired to present his client's appeal to the court.**
- 2. The hearing of the appeal is adjourned to the next sitting of Saint Christopher and Nevis scheduled for the week commencing 5th October 2026.**

Reasons:

During the sitting of the Court of Appeal in Saint Christopher and Nevis, counsel for the appellant sought to appear via Zoom by way of late request. Although the Court acceded to the request by counsel to appear virtually, counsel purported to appear before the Court improperly attired. The Court also noted that the appellant was not present via zoom or in person despite having been notified by the Registrar of the High Court that he was to present himself in person at the court in St Kitts for the sitting of this Court. In the circumstances, the Court declined to hear counsel or the appeal. The matter was accordingly adjourned to the next sitting in Saint Christopher and Nevis, scheduled to commence the week of 5th October 2026 with costs of \$750.00 to be paid by counsel to the respondent as wasted costs.

Case Name:

Ramsbury Properties Limited

v

Oceanview Construction Ltd.

**[NEVHCVAP2025/0009]
(Saint Christopher and Nevis)**

Date: Wednesday, 22nd April 2026

Coram: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Appellant/ Respondent:	Ms. Angela Cozier
Respondent/Applicant:	Mrs. Leonara Walwyn

Issues: Application to strike out appeal- No submissions filed in support of the application to strike out - Whether appeal in its entirety ought to be struck out - Whether appeal has a realistic prospect of success - Rules 15.2 and 26.3 of the Civil Procedure Rules (Revised Edition) 2023 - Whether the appeal seeks to challenge the substance and effect of a final order - Whether appeal is an abuse of process - Whether the issues in the appeal are res judicata - Whether stay of execution ought to be discharged

Type of Order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The notice of application filed on 5th February 2026 to strike out the interlocutory appeal filed on 16th July 2025 is dismissed with respect to ground of appeal 1.
2. The notice of application filed on 5th February 2026 to strike out the interlocutory appeal filed on 16th July 2025 is granted with respect to ground of appeal 2 and the second part of ground of appeal 3 inclusive of the words “in any case, may be nullified if, as the Applicant contends, the finding of the Court made by Redhead J in 2011 was not in fact an Order of the Court because it lacked certainty”.

3. Ground 2 and the second part of ground 3 inclusive of the words set out in paragraph 2 of this order, are struck out.
4. The application to discharge the stay of execution is dismissed.
5. No order as to costs.

Reasons:

Before the Court was a Notice of Application filed on 5th February 2026 by which the applicant Oceanview Construction Ltd, sought an order striking out or dismissing the interlocutory appeal filed by the respondent, Ramsbury Properties Ltd, on 16th July 2025 against the order of the learned judge dated 30th April 2025. It was accompanied by the supporting affidavit of Sandra Liburd filed on 5th February 2026. Leave to appeal and a stay of execution were granted by order of a single judge of the Court on 24th June 2025. The applicant contended that the appeal had no real prospect of success and ought to be dismissed pursuant to rules 15.2 and 26.3 of the Civil Procedure Rules (Revised Edition) 2023 ('the CPR'). The applicant also sought an order discharging the stay of execution to, in its words 'uphold finality, prevent injustice and conserve judicial resources'.

The order appealed against was made by the High Court judge on a judgment summons filed on 3rd April 2025 in respect of a judgment where another High Court judge had ruled in 2011 that the applicant "was entitled to a refund of its deposit" paid under a lease, said to be in the sum of US\$56,000.00.

In the order appealed against, the learned judge directed and/or ordered:

- i) the parties to file and serve by 14th May 2025, skeleton arguments and authorities on which cost regime applies;
- ii) the respondent/judgment debtor to file and serve an amended judgment summons on or before May 1st 2025;
- iii) the respondent/judgment debtor to pay the amount of US\$3000.00 into the applicant's legal

counsel's law chambers by close of business on May 3rd 2025;

iv) the respondent/judgment debtor to pay the amount of US\$7000.00 into the applicant's legal counsel's law chambers by close of business on May 30th 2025;

v) the respondent/judgment debtor to pay the remaining sum exclusive of costs into the applicant's legal counsel's law chambers by close of business on July 29th 2025;

vi) the respondent/judgment debtor to file and serve its audited financial statements and or affidavit of means on or before July 15th 2025;

vii) that the amended judgment summons is fixed for further hearing on July 30th 2025;

viii) should the respondent /judgment debtor fail to comply with the orders in paragraphs 3, 4, 5, and 6 above, the provisions of CPR rule 52.5(c)(ii) and (iii) will apply.

(The rationale for this provision is that the Judicial Committee of the Privy Council ('JCPC') put an end to these proceedings and the judgment debtor had time to put its affairs in order. The judgment debtor has however failed to lead any evidence of its position.)

The application to strike out the interlocutory appeal was premised on six grounds that overlapped in some respects, namely:

i) the doctrine of res judicata in that the appeal seeks to challenge the substance and effect of the final judgment, which is completed except for the issue of quantification of costs and enforcement;

ii) the judge committed no appealable error of law, he did not alter the substantive rights of the parties; and any adjustment to figures by him served to merely correct arithmetical or clerical matters, ensured that the judgment debt accurately reflected the binding final judgment,

and such adjustments fall within the court's ancillary and corrective jurisdiction including CPR 42.10;

iii) the appeal is an abuse of process – in that it is frivolous, vexatious, oppressive and calculated to delay satisfaction of a long-outstanding judgment debt, the respondent having exhausted every level of appeal and now utilizes a procedural manoeuvre to prolong enforcement, thereby attempting to undermine the JCPC's authority and integrity of the appellate process;

iv) the affidavit of Sandra Liburd filed in support of the judgment summons and her authority are immaterial as the enforcement order does not depend on disputed factual assertions, and liability has already been finally determined; further, the Rules of the Supreme Court provides for enforcement affidavits to be sworn by clerks, agents or persons with knowledge of records. In any event, the judge corrected the figures, assessed matters independently and did not blindly accept the affidavit and the correction was in the respondent's favour;

v) finality of litigation – The Privy Council's decision is binding on all courts of the Eastern Caribbean Supreme Court and it is not open to the respondent in 2026 to re-characterize the 2011 High Court judgment as 'not an order'.

vi) the appeal has no real prospect of success. It is not about enforcement error but a delayed collateral assault on the PC judgment and is therefore an abuse of process.

The respondent opposed the application. Its director Dwight Cozier's affidavit in response was filed on 20th February 2026. It accepted that the substantive issues in the case were finally determined by the Privy Council but countered among other things, that the appeal concerned the legality and jurisdictional propriety and subsequent enforcement/quantification order made by the High Court; the process by which the figures were determined was legally flawed; the adequacy and

admissibility of evidence by a court when making an enforcement determination is an appealable issue; and the finality of litigation does not immunize post-judgment procedural and jurisdictional errors from appellate review. Therefore, the issues raised in the notice of appeal regarding arguable jurisdictional error and the improper exercise of corrective powers were serious, properly arguable and suitable for determination at a full hearing.

The Court considered the Notice of Application; the supporting affidavit of Sandra Liburd with exhibits, the affidavit of Dwight Cozier in response; the order dated 30th April 2025 against which the appeal was filed; the judgment of the Privy Council dated 17th December 2024 in Appeal No. 0190 of 2022 reported at [2024] UKPC 40 and the related order dated 6th May 2025; the original judgment summons filed on 3rd April 2025, the amended judgment summons filed on 30th April 2025; and the respondent's written submissions filed on 26th March 2026. The Court also took into consideration the oral submissions made at the hearing by the applicant and the respondent.

The Court noted that the appeal advanced 3 principal grounds which essentially challenge a) the correctness of the 30th April 2025 order on procedural grounds, b) its legality and jurisdictional propriety and c) that it sought to interrogate the nature and force of the 2011 order which is the subject of the judgment summons.

The Court considered CPR rule 62.24 which provides that the court has all of the powers and duties of the High Court including the powers set out in Part 26. The Court considered further that CPR 26.3 empowers the Court to strike out an appeal if it appears to the Court that it does not disclose any reasonable grounds for bringing or defending a claim, or if it is an abuse of the process of the court. The Court determined that one ground of the appeal raised legitimate legal issues that have a realistic prospect of success namely ground 1, by reason that it highlighted certain alleged procedural irregularities that informed the 30th April 2025 order, and may be potentially fatal to the order. The Court was persuaded that the respondent's contention with respect to the notice of application to strike, that those issues highlighted in ground of

appeal 1 were reasonably arguable and in the interest of justice merited appellate review and determination.

With respect to the second ground of appeal, the respondent properly conceded that it constitutes a collateral attack on the final determination of the Privy Council with respect to the issues raised and determined by the 2011 judgment and therefore it would not be appropriate to invite the Court to reconsider them as this would contravene the doctrine of *res judicata* and the legal principle articulated in Henderson v Henderson and applied in a number of decisions from this Court including Levi Maximea v The Chief of Police et al DOMHCVAP2020/0009 (delivered on 7th December 2023).

In that case, Webster JA succinctly summarized the legal concept at paragraph 29 as follows:

‘[29] In its simplest form the principle of *res judicata* provides that where a decision is pronounced by a court or tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by the parties who are bound by the decision, except on appeal. The principle applies not only to the decisions of the earlier court or tribunal but to any issue or matter that could have been dealt with in earlier proceedings. This latter aspect of the principle is known as the rule in *Henderson v Henderson*. The rule is encapsulated in the dictum of Sir James Wigram VC in the following terms –

“[W]here a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea

of res judicata applies except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.” (at pg. 115.)

With respect to the third ground of appeal the respondent similarly conceded that the second part of that ground which read “and which in any case may be nullified if as the applicant contends the finding of the Court made by Redhead J in 2011 was not in fact an order of the Court because it lacked certainty” offends against the rule in Henderson v Henderson but maintained that it wished to retain the first part of that ground.

For these reasons, the Court determined that the application to strike succeeded in part in relation to grounds of appeal 2 and part of ground 3 which ought to be excised.

In view of the determination on the application to strike, the application to discharge the stay of execution is rendered academic. It is therefore dismissed.

The outcome of the application resulted in a cost neutral position, both parties having achieved a measure of success.

Case Name:

Ramsbury Properties Limited

v

Oceanview Construction Ltd.

**[NEVHCVAP2025/0009]
(Saint Christopher and Nevis)**

Date:

Wednesday, 22nd April 2026

Coram: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Ms. Angela Cozier

Respondent: Mrs. Leonara Walwyn

Issues:

Interlocutory appeal - Rule 30.3 of the Civil Procedure Rules (Revised Edition) 2023 - Judgment Summons - Whether the court's reliance on the affidavit was a procedural error, as the affiant was a solicitor's clerk allegedly lacking the personal knowledge, capacity, or authority required under CPR 30.3 to bind the company - Whether the learned judge erred in law by issuing payment and enforcement orders based on a Judgment Summons that was "irregular" - Whether the Judgment Summons was properly before the court given that it lacked supporting evidence from a representative of the Judgment Creditor and contained "incorrect" calculations for interest and quantum - Whether the judge failed to correctly apply CPR 52.4 regarding the proper personal service of a valid Judgment Summons before proceeding to make orders for payment and potential committal - Whether the appellant is being forced to pay arbitrary sums that may ultimately be nullified if the underlying 2011 finding by Redhead J is found to lack the certainty required to be an enforceable order

Type of Order: N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

1. Judgment is reserved.
2. The Chief Registrar will notify the parties when the judgment of the Court is available and ready to be delivered.
3. The Registrar of the High Court is directed to provide to the Court and to the parties within 14 days of today's date the official audio

recording, if any, of the Court's proceedings on 30th April 2025 from which the 30th April 2025 Order which is the subject of this appeal emanated, along with a transcript of the proceedings certified under the hand of the Registrar.

4. The parties will be invited by the Court to file and exchange further written skeleton arguments with authorities on any issue deemed necessary by the Court following receipt of the audio recording and transcript.

Reasons: N/A

Case Name: Arnold Adams

v

[1] Austin Coker

[2] Austawaki Coker

[SKBMCVAP2020/0006]

(Saint Christopher and Nevis)

Date: Wednesday, 22nd April 2026

Coram: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Ms. Hadya Dolphin

Respondent: Ms. Zenitaa Singh

Issues:

Magisterial Civil Appeal - Appeal against order entering judgment against the appellant - Whether the learned magistrate erred in finding that the appellant cannot claim and recover from a tortfeasor damages for loss which happens to be covered under an insurance policy and paid to him by his insurer - Whether the learned magistrate erred in distinguishing between contingency and indemnity insurance - Whether the learned magistrate erred in finding that the rule that a sum received by the plaintiff on an accidental insurance policy cannot be taken into account in reduction of damages does not apply generally and only to contingency insurance and personal injury claims - Whether the learned magistrate failed to give sufficient weight to the evidence of the appellant that he sustained pain after the accident - Whether the learned magistrate erred in awarding costs to the respondents - Whether the learned magistrate gave undue weight to the fact that the appellant did not give evidence of payments made to him by his insurers - Whether the appellant sufficiently proved his losses to the court - Whether it was irrelevant for the appellant to give evidence of his private interaction with his insurers or plead the amount paid out under his insurance policy - Whether the appellant erred in finding that the appellant was not entitled to the difference between the amount paid by his insurers and the amount claimed on the summons

Type of Order:

Oral decision with written reasons to follow

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The Court shall provide written reasons to follow.**
- 3. The matter of quantum of damages/loss is remitted to be considered and determined by the learned magistrate in the court below on the basis of the record of the proceedings and the oral and documentary evidence led in the court below.**

4. Costs of the appeal agreed in the sum of \$1000.00 to be paid to the appellant within 21 days of the date of this order.

Reasons:

Before the Court was a notice of appeal filed on 18th December 2020 against the order of the learned magistrate dated 24th November 2020 wherein judgment was entered in favour for the respondents and the costs was awarded to the respondents.

Having considered the grounds of appeal, the written and oral submissions of learned counsel for the parties. The Court was of the unanimous opinion that the appeal ought to be allowed. However, the Court reserved its written reasons for its decision and remitted the issue of quantum of damages to the court below to be heard by the learned magistrate and awarded costs in the appeal to the appellant in the sum of \$1000.00 to be paid within 21 days of the date of this order.

Case Name:

Cheryl Paige

v

O.D. Brisbane & Sons (Trading) Ltd

[SKBHCVAP2025/0009]

(Saint Christopher and Nevis)

Date:

Thursday, 23rd April 2026

Coram:

**The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:	Ms. Sherry-Ann Liburd-Charles with Mr. Leon Charles
Respondent:	Ms. Angelina Gracy Sookoo-Bobb

Issues:

Interlocutory appeal - Summary judgment - Exercise of judicial discretion - Appeal against decision of the learned Master granting summary judgment dismissing the appellant's claim for loss of earnings - Whether the learned Master erred in concluding that the appellant had no realistic prospect of success on the issues of whether her injuries left her disabled, unable to work or fully provide for herself, and a handicap on the labour market - Whether the learned Master misapplied the principles governing summary judgment by conducting a mini trial rather than determining whether the issues were fit for trial - Whether the learned Master failed to take into account affidavit evidence concerning the appellant's continuing pain, physical limitations, unemployment, need for future surgeries and reduced earning capacity - Whether the learned Master erred in treating medical reports attached to the pleadings as evidence for determination of the application - Whether the learned Master erred in construing the medical report of Dr. Hendrickson as conclusive proof that the appellant had no disability - Whether the learned Master failed to consider that expert medical evidence could reasonably be expected to be available at trial - Whether the learned Master erred in his treatment of the appellant's receipt of Social Security disablement pension and its relevance to employability and disability - Whether the learned Master's exercise of discretion was plainly wrong and should be set aside on appeal

Type of Order:

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The Court shall provide written reasons to follow.**
- 3. Costs to the appellant on the appeal to be assessed if not agreed within 21 days.**

Reasons:

Before the Court was an appeal against the decision of the learned Master granting summary judgment dismissing the appellant's claim for loss of earnings.

In the present matter, the claim for future loss of earnings depended substantially upon the medical evidence, in particular, the report of Dr. Hendrickson. While one aspect of that report stated that the appellant was not presently disabled and was capable of performing her daily chores at home and at work, the report also stated that the prognosis was reserved and referred to future management options, including the possibility of surgery for a percentage of patients. Those matters plainly raised issues to the future course of the appellant's condition and the extent, if any, to which her earning capacity might later be affected.

The Court considered that the learned Master placed determinative weight on the passages of the report addressing the appellant's present functional capacity, while failing to adequately engage with the other portions of the same report which expressly left the long term prognosis uncertain. A reserved prognosis is inconsistent with any determinative conclusion that the appellant could not, as a matter of law, establish future economic loss. Where the medical evidence itself contemplates uncertainty and possible future intervention, the Court found that it cannot be properly said that the claim has no real prospect of success.

Further, the issue of future loss of earnings was inherently fact sensitive. It required consideration not only of medical prognosis, but also the appellant's age, likely remaining working life, the nature of her employment, whether pain or reduced capacity might affect future employability, and whether any future treatment might result in temporary or permanent limitations. Those are matters ordinarily to be evaluated at trial upon full evidence, including, where necessary, cross examination of the medical expert.

The Court was also of the view that this was a premature stage at which to finally dispose of that head of claim. The evidence suggested that the appellant continued to experience symptoms and further

treatment had not been ruled out. This was not a case where the medical position had fully crystallised such that the court could safely conclude that no future loss could arise.

In those circumstances, there remained a realistic prospect that, after trial of the relevant issues, the appellant might establish some measure of future loss of earnings. At the very least, there was a compelling reason for that aspect of the claim to proceed to trial so that the evidence could be properly tested and evaluated

Case Name:

Brandon- Lee Wells

v

Director of Public Prosecutions

[SKBHCRAP2020/0007]

(Saint Christopher and Nevis)

Date:

Thursday, 23rd April 2026

Coram:

**The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Chesley Hamilton with Mr. Kamau Grant and Mr. Johsiah Imo

Respondent:

Mr. Leslie Roberts

Issues:

Criminal appeal - Section 144 of the Evidence Act of Saint Kitts and Nevis - Confession of co-accused - Corroboration warning - Whether the learned judge erred in law in failing to give a corroboration warning to the jury in circumstances where the main witness for the prosecution was an accomplice to the crime - Whether the learned trial judge gave an inadequate

care/caution warning as to the dangers of relying on an oral admission as a substantial basis for a conviction

Type of Order:

N/A

Result/Order:

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name:

Dr. Kelvin Daly

v

**[1] Alex Jeffers
[2] Mark Brantley
[3] Grandson's Trucking
Services Ltd**

**[NEVHCVAP2024/0012]
(Saint Christopher and Nevis)**

Date:

Friday, 24th April 2026

Coram:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Angela Cozier

Respondents:

Mr. Brian Barnes with Mr. Adrian Daniel and Ms. Leigh-Anne Wellington

Issues:

Interlocutory Appeal - Whether judge erred in summarily striking out the appellant's counterclaim and amended counterclaim - Whether the judge erred in that he failed to provide adequate reasons for exercising his discretion to strike out the counterclaim and the amended counterclaim - Whether the counterclaim and amended counterclaim satisfied the test for striking out under rule 26.3 of the Civil Procedure Rules (Revised Edition) 2023 - Whether the

counterclaim and amended counterclaim raised triable issues

Type of Order:

Oral Judgment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The orders of the judge made on 28th May 2024 are affirmed.**
- 3. The appellant shall pay the respondent's costs to be assessed if not agreed within 21 days.**

Reasons:

Before the Court was a notice of appeal filed on 16th October 2024 against the decision of the learned judge dated 28th May 2024 wherein the judge struck out the appellant's counterclaim and amended counterclaim.

Having considered the grounds of appeal, the written and oral submissions of learned counsel for the parties, the Court was of the unanimous opinion that the appeal ought to be dismissed. The Court affirmed the orders of the judge, awarded costs in the appeal to the appellant to be assessed if not agreed within 21 days, and undertook to provide a reasoned order for its decision.

Case Name:

Deon & Associates Limited

v

[1] Calvin Prentice

[2] Jamie Wilkinson

[NEVHCVAP2022/0004]

[NEVHCVAP2022/0006]

[NEVHCVAP2022/0007]

[NEVHCVAP2024/0011]

(Saint Christopher and Nevis)

Date: Friday, 24th April 2026

Before: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Terrence V Byron with Ms. Shari-Ann Walker
1st Respondent:	Ms. Dia C. Forrester
2nd Respondent:	No Appearance

Issues: Interlocutory Appeal - Judgement Debt - Commercial Transaction - Whether the learned judge erred in treating a money judgment as a judgment or order which requires a person to do an act within a specified time or by a specified date pursuant to CPR 2023 45.6 so as to order its enforcement - Whether the learned judge erred in his interpretation of Part 52 of the Civil Procedure Rules (Revised Edition) 2023 ("CPR 2023") and Practice Direction No 2 of 2007 - Whether the learned judge erred in failing to treat the judgment summons as an abuse of process - Whether the learned judge erred in his order as to costs in light of the alleged abuse of process - Whether the learned judge erred in assessing the evidence before him in determining that the company could afford to pay the sum of \$100,000.00 by August 31st 2022 and pay \$2,500.00 per month until the judgment debt is paid in full - Whether the learned judge erred in law in seeking to compel the appellant, a person not sued by the claimant, to satisfy a judgment debt owed by the company

Type of Order: N/A

Result/Order: IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Reasons:

N/A