

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

ANGUILLA
VIDEOCONFERENCE
5th – 7th May 2025

JUDGMENTS

Case Name: [1] Clico International Life Insurance Ltd.
[2] Wilbur Harrigan
(As Administrator of Clico International Life Insurance Ltd.)
v

[1] Eastern Caribbean Baptist Mission
[2] Jeriann George
[3] Hensworth Jonas

[ANUHCVP2019/0035]
(Antigua and Barbuda)

Date: Tuesday, 6th May 2025

Coram for delivery: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Reginald T. A. Armour, Justice of Appeal
[Ag.]
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Rene Butcher

Respondents: Ms. Chantal Marshall

Issues:

Civil Appeal – Sale of land – Enforcement of judgment – Beneficial interest – Lifting the corporate veil – Whether the learned trial judge was correct in finding that the first appellant is the beneficial owner

of the Land – Whether the learned trial judge was correct in holding that the circumstances warranted lifting the corporate veil

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the decision of the learned trial judge is allowed.**
- 2. The order of the learned trial judge made at paragraph [26] of the written judgment is set aside.**
- 3. The appellants shall have their costs to be paid by the respondents to be assessed if not agreed within 21 days of the date of this order.**

Reason:

1. There is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The learned judge's summary in her written judgment cannot be regarded as correct law in light of the decision in *Prest v Petrodel Resources Ltd*. There was no evidence in the court below to support a finding for the corporate veil to be pierced. It cannot be said that CLICO TT is under an existing legal obligation or liability or subject to an existing legal restriction which it deliberately evaded or whose enforcement it deliberately frustrated by interposing a company, the first appellant, under its control. The learned judge was therefore wrong to find that the circumstances were such that the court should pierce the corporate veil since none of these purposes were found to exist on the facts before her.

Prest v Petrodel Resources Ltd [2013] UKSC 34, [2013] 2 AC 415 followed; Sergey Taruto v JSC VTB Bank BVIHCMAP2021/0002; BVIHCMAP2021/0008; BVIHCMAP2021/0012 (delivered 2nd June 2021, unreported) followed; Broad Idea International Limited v Convoy Collateral Limited BVIHCMAP2019/0026 (delivered 29th May 2020, unreported) followed.

2. The following principles can be distilled from Prest: (1) the onus was on the respondents to satisfy the court that the first appellant has a beneficial interest in the Land; and (2) the court was required to consider the parties' shared intentions and the surrounding circumstances before, during and subsequent to the acquisition of the Land in order to determine whether the first appellant was in fact the beneficial owner of the Land. The statements and conclusions of the learned trial judge that the first appellant was the beneficial owner were arrived at without applying ordinary principles and presumption of equity especially those relating to gifts and resulting trusts. There was no explanation of the nature of the trust that was created such that the first appellant would become the beneficial owner of the Land. Moreover, the learned trial judge did not set out any of the elements necessary to establish any trust nor did she consider or assess the elements of resulting or constructive trusts. It is difficult to see how the learned trial judge arrived at her conclusion on beneficial ownership given the very limited evidence before her. The learned trial judge therefore erred in her finding of beneficial ownership.

Prest v Petrodel Resources Ltd [2013] UKSC 34 followed.

3. A finding of beneficial ownership could not, without more, lead to a lifting of the corporate veil to

facilitate enforcement of liability. The decision in Prest makes clear that piercing the veil of incorporation can only occur in limited circumstances and only to prevent the abuse of corporate legal personality. It is only if there was evidence that CLICO TT was abusing the corporate legal personality that the learned trial judge would have been justified in piercing the veil of incorporation. Nonetheless there was nothing on the facts before the learned trial judge that would lead her to find that the first appellant was the beneficial owner of the Land. Even if there was such evidence, this alone would not be sufficient to pierce the corporate veil. The learned trial judge would need to find that there was impropriety on the part of CLICO TT in that it used the corporate group structure to avoid liability.

Prest v Petrodel Resources Ltd [2013] UKSC 34 followed.

Case Name:

**Kier Construction Limited
v**

**[1] Sundry Workers
[2] George Dexter Tavernier
(Trading as Tavernier Construction)**

**[ANUHCVP2022/0009]
[Formerly ANUHLTAP2019/0007]**

(Antigua and Barbuda)

Date:

Wednesday, 7th May 2025

Coram for
delivery:

**The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Reginald T. A. Armour, Justice of Appeal
[Ag.]**

The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. Kendrickson Kentish

Respondents:

Ms. Safiya Roberts for the first respondent

No appearance for the second respondent

Issues:

Application for conditional leave to appeal to His Majesty in Council - Section 122(1)(a) of the Antigua and Barbuda Constitution Order 1981 - Appeal as of right - Whether the order of the Court is a final order or interlocutory – Section 122(2)(a) of the Antigua and Barbuda Constitutional Order 1981 – Application of ‘or otherwise’ limb

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Amended Notice of Motion for leave to appeal to His Majesty in Council is dismissed.**
- 2. Costs to the first respondent to be assessed if not agreed within 21 days.**

Reason:

1. The Privy Council in **Inderjit Kaur Chhina v Muhammed Nazir Muhammed Ismail**, confirmed that the ‘application test’ is the correct standard for determining whether a decision is ‘final’ in the Eastern Caribbean Supreme Court jurisdictions. Therefore, the application test must be applied in respect of the decision for which the applicant seeks leave to apply to His Majesty in Council, namely the decision of the Court of Appeal holding that Tavernier was the employer of the Sundry Workers for the purposes of the claim for unfair dismissal. Applying the application test, the decision of this Court did not determine the matter in litigation for either of the parties. If the decision of this Court had been different, the matter in dispute between the parties (the unfair dismissal claim) would have continued against either Tavernier or Kier and, the Industrial Court would then have had to determine whether the claim for unfair dismissal was proved against either of them. Consequently, Tavernier cannot ground its appeal to His Majesty in Council in section 122(1)(a) of the Constitution because the order of the Court of Appeal is not a ‘final decision’ which is a necessary condition for the grant of leave under that section.

Inderjit Kaur Chhina v Muhammed Nazir Muhammed Ismail and another [2024] UKPC 10 applied.

2. Section 122(2)(a) of the Constitution provides that an appeal shall lie from the decisions of the Court of Appeal to His Majesty in Council with the leave of the Court of Appeal in decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of

its great general or public importance or otherwise ought to be submitted to His Majesty in Council. To satisfy the 'or otherwise' limb, an applicant must demonstrate that there is some good reason or ground why leave to appeal ought to be granted. This limb may be invoked where an applicant can demonstrate that the decision sought to be further appealed is so flawed or so incorrect that it ought not to be allowed to stand or where there is some other good reason why the guidance of their Lordships' Privy Council is desirable.

Section 122(2)(a) of the Antigua and Barbuda Constitution 1981, Cap 23 of the Revised Laws of Antigua and Barbuda applied; Multibank FX International Corporation v Von De Heydt Invest BVIHCVAP2022/0008 (delivered 7th July 2023, unreported) applied.

3. Tavernier's core objection is the statement of the Court of Appeal that Kier is a well-established construction company in Antigua and Barbuda. However, Tavernier failed to provide transcripts of evidence from the court below to make good its submission. In the Amended Notice of Motion, the applicant has not sought to impeach the reasoning of the Court regarding this statement. Having regard to the threshold required for an applicant to invoke the 'or otherwise' limb, Tavernier has not demonstrated that the decision of this Court is so flawed or so incorrect that it ought not to be allowed to stand or that there is some other good reason why the guidance of His Majesty in Council would be desirable.

Multibank FX International Corporation v Von De Heydt Invest BVIHCVAP2022/0008 (delivered 7th July 2023, unreported) applied.

Case Name:

APPLICATIONS AND APPEALS

- [1] Tomaž Slivnik**
- [2] Satay Limited**
- [3] Helen Bayer Constable**
- [4] Patrick Constable**
- [5] Walter Bayer II**
- [6] Teresa Bayer**
- [7] Sunny Days Management Corporation**
- [8] Rhino LLC**
- [9] Diamont Company N.V.**
- [10] Synectics Capital Corp**
- [11] Ihatsu Fudosan Capital Limited**
- [12] Duna Holding Limited**
- [13] Mars Exploration Inc.**
- [14] Estate of David A. Crowley**
- [15] Equipment Leasing Ltd**
- [16] International Mortgages Limited**
- [17] The Little Ship Company Ltd**
- [18] Estate of Raymond Longbottom**

v

- [1] Martin Dinning (as Conservator)**
- [2] Hudson Carr (as Conservator)**
- [3] Shawn Williams (as Conservator)**
- [4] Robert Miller (as Conservator)**
- [5] Eastern Caribbean Central Bank**
- [6] Anguilla Financial Services Commission**
- [7] Attorney General of Anguilla**
- [8] Foreign, Commonwealth and Development
Office**
- [9] National Bank of Anguilla Limited (in
receivership)**
- [10] Caribbean Commercial Bank Limited (in
receivership)**

**[11] Gary Moving (as receiver of NBA and
CCB)
[12] National Commercial Bank of Anguilla
Limited**

[AXAHCVAP2023/0005]

(Anguilla)

Date: Monday, 5th May 2025

Coram: The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mde. Esco L. Henry, Justice of Appeal

The Hon. Mr. Reginald T. A. Armour, Justice of Appeal
[Ag.]

Appearances:

Appellant: 1st appellant in person

Respondents: Mr. Paul Dennis KC, with him Ms. Navine Fleming and
Mrs. Nadine Whyte Laing, for the 2nd, 3rd, 5th, 9th, 10th
and 11th respondents
Ms. Yanique Stewart for the 6th respondent

Mr. James Willan KC, with him Mr. William Hare and
Mr. Alex Richardson for the 12th respondent

Issues: Application for stay of proceedings

Result / Order:

IT IS HEREBY ORDERED THAT:

The application for a stay of proceedings is adjourned to a date to be fixed by the Chief Registrar.

Reason:

Before the Court was an application for a stay of the proceedings in the court below during the intervening period between the determination of this appeal and the date of delivery of a pending decision in the court below, in respect of an application for leave to appeal against the judgment of Pariagsingh J dated 5th December 2024 and for stay of execution of that judgment. The application was filed on 24th April 2025 and served on the respondents on 30th April 2025 via electronic mail. The Court was of the opinion that this constituted short service thereby prejudicing the respondents in their right to be heard on the application. In the circumstances, the Court was of the view that, in the interests of justice, the application for a stay should be adjourned to allow the respondents adequate time to respond to the application.

Case Name:

**[1] Tomaž Slivnik
[2] Satay Limited
[3] Helen Bayer Constable
[4] Patrick Constable
[5] Walter Bayer II
[6] Teresa Bayer
[7] Sunny Days Management Corporation
[8] Rhino LLC
[9] Diamont Company N.V.**

[10] Synectics Capital Corp
[11] Ihatsu Fudosan Capital Limited
[12] Duna Holding Limited
[13] Mars Exploration Inc.
[14] Estate of David A. Crowley
[15] Equipment Leasing Ltd
[16] International Mortgages Limited
[17] The Little Ship Company Ltd
[18] Estate of Raymond Longbottom

v

[1] Martin Dinning (as Conservator)
[2] Hudson Carr (as Conservator)
[3] Shawn Williams (as Conservator)
[4] Robert Miller (as Conservator)
[5] Eastern Caribbean Central Bank
[6] Anguilla Financial Services Commission
[7] Attorney General of Anguilla
[8] Foreign, Commonwealth and Development
Office
[9] National Bank of Anguilla Limited (in
receivership)
[10] Caribbean Commercial Bank Limited (in
receivership)
[11] Gary Moving (as receiver of NBA and
CCB)
[12] National Commercial Bank of Anguilla
Limited

[AXAHCVAP2023/0005]

(Anguilla)

Date:

Monday, 5th May 2025

Coram:

The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mde. Esco L. Henry, Justice of Appeal

**The Hon. Mr. Reginald T. A. Armour, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

1st appellant in person

Respondent:

**Mr. Paul Dennis KC, with him Ms. Navine Fleming and
Mrs. Nadine Whyte Laing, for the 2nd, 3rd, 5th, 9th, 10th
and 11th respondents
Ms. Yanique Stewart for the 6th respondent**

**Mr. James Willan KC, with him Mr. William Hare and
Mr. Alex Richardson for the 12th respondent**

Issues:

**Application for leave to adduce fresh evidence -
Whether the evidence could not have been obtained
with reasonable diligence for use at the trial -
Whether the evidence would have an important
influence on the result of the case - Whether it is just
in all the circumstances for the Court to grant the
application**

**Interlocutory Appeal - Appeal against decision of the
learned master – Extension of time for serving a
claim form – CPR 2000 – rule 8.13 – Application to
amend statement of claim - Whether the learned
master erred in dismissing the appellants' application
to serve the 4th respondent by substituted service
and striking out the claim form against the 4th
defendant - Whether the learned master erred in
dismissing the appellants' application to amend the
statement of claim without considering the
application - Whether the learned master erred in
setting aside the extension order in relation to the 7th**

defendant and striking out the claim against the 7th defendant - Whether the learned master erred in setting aside the extension order in relation to the respondents and striking out the claims against the 2nd, 5th, 6th, 7th, 9th, 10th, 11th and 12th respondents

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Rex

v

Kirkland Spencer

**[AXAHCRA2022/0004]
(Anguilla)**

Date:

Tuesday, 6th May 2025

**Coram for
delivery:**

**The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Reginald T. A. Armour, Justice of Appeal
[Ag.]
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of
Appeal [Ag.]**

Appearances:

Applicant:

Mr. Terrence Williams KC with him Ms. Erica Edwards

Respondent:

No appearance

Issues:

Application for leave to appeal - Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The Registrar of the High Court in Anguilla is directed to liaise with the relevant Ministry officials and with the respondent to investigate the need to grant him legal aid; and to make the necessary arrangements for the respondent to be subjected to the means test and any other existing protocols so that he may be represented by legal counsel at the adjourned hearing.
2. The Chief Registrar is required to contact the President of the Anguilla Bar Association Ms. Merlene Barrett and request her attendance or that of her designee at the adjourned hearing before this Court.
3. The Chief Registrar shall within 7 days of today's date, disclose to the President of the Anguilla Bar Association, the file for this matter, by way of Google Drive to facilitate her informed engagement with the Court at the adjourned hearing.
4. The hearing of the notice of application for leave is adjourned to a date to be fixed by the Chief Registrar on proof of service on the respondent of the said notice of application for leave to appeal.

Reason:

The Court noted that there was no appearance by the respondent, and noted the acknowledgment by learned King's Counsel for the appellant that the respondent had not been served with the notice of application for leave to appeal. The Court also noted learned King's Counsel's undertaking to make arrangements for service of the notice of application for leave on the respondent personally within 7 days of the date of the hearing.

The Court also noted that the notice of application engages novel legal points potentially on

constitutional issues in respect of the true construction and application of section 35A (2) (a) and (c) of the Eastern Caribbean Supreme Court (Anguilla) Act which is at the heart of the application for leave to appeal.

The Court also noted further that the issues are largely legal in nature and that the resolution would potentially have far reaching effects within the criminal justice system in Anguilla that would not be limited to the respondent; and that the respondent is unrepresented in an application arising from an indictment in which he was charged with murder and possession of a firearm.

The Court was of the view that because of the nature of the issues with which the Court must grapple, this is a case in which the Court would benefit from comprehensive submissions by experienced King's Counsel on behalf of the respondent or amicus curiae and also from the local Bar Association. The Court also considered that in view of the weighty and novel legal issues that arise, it would be in the interests of justice and only fair that the respondent be represented by experienced legal counsel when this matter proceeds; and, that it would be prudent to invite submissions from the local Bar Association and further that the learned Bar President Ms. Merline Barrett should be invited to attend the adjourned hearing in the event that the Court determines to take such an approach.

Case Name:

Isaac Joseph

v

Matthew Blair

[GDAHCVAP2025/0005]

[Formerly GDAHCVAP2019/0009]

(Grenada)

Date:

Wednesday, 7th May 2025

Coram: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Reginald T. A. Armour, Justice of Appeal
[Ag.]
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	No appearance

Issues: Adjournment

Type of Order: N/A
Result / Order: IT IS HEREBY ORDERED THAT:

1. The matter is adjourned for hearing to a date to be fixed by the Chief Registrar in the week commencing 19th May 2025.
2. The court office must ensure that notice of hearing of the adjourned hearing date is served on Mr. Matthew Blair at least five days in advance of the hearing date and provide proof of service thereof.

Reason: The respondent was not served with a notice of hearing of the appeal. The Court therefore adjourned the hearing of the matter in order to effect service on the respondent.

Case Name: Pamela Riley
v

National Bank of Anguilla Limited
(In receivership)

[AXAHCVAP2021/0007]
(Anguilla)

Date: Wednesday, 7th May 2025

Coram: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Reginald T. A. Armour, Justice of Appeal [Ag.]
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Dwight Horsford with him Mr. Carlyle Rodgers and Mr. Kennedy Hodge

Respondent: Ms. Jacinth Jeffers

Issues: Civil Appeal - Appeal against the decision of the learned trial judge dismissing the appellant's application to lift the statutory stay under section 143(c) of the Banking Act of Anguilla, No. 6 of 2015 - Whether the statutory stay imposed pursuant to section 143(c) of the Banking Act of Anguilla, No. 6 of 2015 should be lifted - Whether the learned trial judge erred in his failure to consider and/or to give due consideration to relevant factors in determining the application - Whether the learned trial judge erred by taking into account irrelevant factors and/or placing unreasonable weight on selective factors in his refusal to exercise judicial discretion to lift the section 143(c) statutory stay - Whether the learned trial judge misconstrued and misapplied section 143(c) and the overall purpose of the Banking Act of Anguilla, No. 6 of 2015 - Whether the learned trial judge erred in his finding that the appellant should have sought redress by pursuing the proof of debt procedure in lieu of having filed the application to lift the section 143(c) statutory stay and seeking that the proceedings before the Labour Tribunal which had already been substantially conducted, be permitted to continue - Whether the learned trial judge erred by effectively conducting a hearing of or otherwise determining the merits of the Appellant's substantive claim, which was a matter for determination before the Labour Tribunal

Type of Order: N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.