

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS
VIDEOCONFERENCE

Monday 10th March 2025 – Friday 14th March 2025

JUDGMENTS

Case Name:

Lisa Vernita Alexander

v

Neil Noel

[SLUHCVAP2024/0012]

Saint Lucia

Date:

Monday, 10th March 2025

**Coram for
delivery:**

The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Sahleem Charles

Respondent: Mrs. Maureen John-Xavier

Issues:

Civil appeal – Personal injury – Contributory negligence – Appeal against apportionment of liability and damages awarded – Whether the learned trial judge erred in taking into account or having given too little weight to the appellant’s evidence as to the manner in which the collision occurred and/or the negligence of the respondent when apportioning liability for the collision at 75% to the appellant and 25% to the respondent – Whether the learned trial judge erred when exercising her discretion at paragraphs 54 and 55 of the judgment and by failing to give sufficient reason for her apportionment of liability

– Whether the learned trial judge erred in her exercise of discretion by failing to take into account or giving too little weight to the appellant’s evidence as to the manner in which the collision occurred – Whether the learned trial judge erred in finding that the appellant had agreed that after the impact her vehicle travelled a further 78 feet before hitting a rock and a further 20 feet before coming to a stop on the side of the major road in the gutter and that the appellant was therefore negligent in causing the collision – Whether the learned judge erred in exercising her discretion in her finding and award of damages against the appellant on the respondent’s claim

Order:

IT IS HEREBY ORDERED THAT:

- (1) The appeal is allowed in part and the decision of the court below on the apportionment of liability and consequential award of damages to the appellant and the respondent set aside.**
- (2) The appellant is found to be 25% liable and the respondent 75% liable for the collision and resulting loss and damages.**
- (3) Damages, interest and prescribed costs in the court below are awarded to the appellant and to the respondent, respectively, in the sums set out at paragraph [92] of the judgment.**
- (4) The respondent shall pay two-thirds of the amount of the appellant’s prescribed costs award in the court below as ordered at subparagraph (vii) of paragraph [92] of the judgment.**

Reason:

- 1. Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence**

should not do so unless satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses is not sufficient to explain or justify the trial judge's conclusion. Similarly, an appeal against the exercise of judicial discretion will not be allowed unless the appellate court is satisfied that: (i) in the exercise of the discretion the judge erred in principle either by failing to take into account or giving too little weight or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (ii) as a result of the error or the degree of error the judge's decision exceeded the generous ambit within which reasonable disagreement is possible such that the decision may be said to be clearly or blatantly wrong.

Michael Francois v Ryan Richards GDAHCVAP2013/0033 (delivered 1st June 2018, unreported) followed; Watt (or Thomas) v Thomas [1947] All ER 582 applied; Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 applied.

2. The trial judge's findings at paragraphs [40] and [41] of the judgment that the appellant had, in the circumstances, driven her motor vehicle below the standard of a prudent driver and was accordingly negligent was correct as a conclusion of partial or contributory liability for the collision, and ought not to be disturbed or set aside by this Court based upon the principles in Watt (or Thomas) v Thomas and Yates Associates. This finding of negligence is well supported by certain factual evidence and findings made by the learned trial judge at paragraphs [40] and [41], the relevant measurements in the TAR, and the evidence and admissions of the appellant when she was cross-examined at the trial including that when she first saw the respondent riding his bicycle from the minor road into the junction with the main road he was some 36 feet away. In making these findings the learned judge committed no

errors of fact or law. It follows therefore that there is no discernable basis entitling this Court to disturb or set off the learned judge's finding of negligence on the part of the appellant.

3. As a matter of principle, a driver cannot be held liable for the collision with another vehicle solely on the basis that in reacting to a sudden emergency he/she committed an error of judgment in the driving or management of the vehicle. Although the learned trial judge did avert to the appellant's evidence that she swerved to the right to avoid the sudden emergence of the respondent from the minor road at the junction, the learned judge failed to properly consider and to analyse this evidence and to make a determination as to whether the appellant's evasive action was reasonable or amounted to an error of judgment on her part having been confronted by a sudden emergence.

Simpson v Peat [1952] AER 447 applied.

4. The learned judge failed to consider whether the appellant having been confronted by the sudden emergence by the respondent riding his bicycle from the minor road into the junction whereby the respondent had injudiciously created an obstruction to the appellant, and the respondent by his own admission proceeding without stopping across the junction having decided 'if you are already in the road you can make it', meant that the respondent was either wholly to blame for the collision or ought to bear the greater proportion of the liability for the collision, as was the case for the appellant at the trial.
5. In deciding a case of negligent driving, a court must consider all aspects of a driver's driving leading up to and at the time of the collision in determining whether aspects of his/her driving was below the standard of a prudent driver in the circumstances, and therefore, in breach of their duty of care to other road users, including the driver of the other vehicle involved in the

collision. This is because all drivers of motor vehicles owe in law a duty of care to other users of the road, including pedestrians, within the area of potential danger and who the driver objectively ought to foresee the risk of injury or damage to if he/she did not exercise reasonable care. The exercise of reasonable care would require the driver to always keep a proper look out when driving so as to determine whether it is safe to proceed or not to proceed, to drive at a speed and in a manner such that he/she would be able to stop their motor vehicle when confronted with the presence of another vehicle or cyclist or pedestrian road-user, to sound the horn to alert other road users of his/her approaching vehicle, to slow down or to bring the vehicle to a stop so as to avoid colliding with another vehicle or other road user, and to take such other prudent and reasonable evasive action to avoid a collision.

Cheryl Edward, Administratrix of the Estate of Janique Lewis v Ethel Mills Claim No. ANUHCv1998/168 followed.

6. The learned judge was entitled at paragraph [41] of the judgment to draw from the measurements recorded in the TAR and from the appellant's responses to questions about them in cross-examination, the reasonable inference that the appellant's vehicle was travelling at a speed and in a manner that was not safe in the circumstances when approaching such a busy junction. The inference drawn by the judge is not that the appellant was driving her motor vehicle in excess of the applicable speed-limit in that area, but that she was driving the vehicle at a speed and in a manner that was unsafe in the circumstances and in breach of the duty of care to other road users, including those likely to emerge from the minor road across the junction and onto the highway, as the learned judge found at paragraph [41]. These factors lead to the finding that the appellant did not slow down or drive cautiously when approaching the busy junction and was driving at a speed such that

she could not stop her vehicle before colliding with the respondent, having first seen him 36 feet away.

7. An appellate court will generally only interfere with a finding of contributory negligence where there has been a substantial misjudgment of the factual basis of apportionment by the trial judge. In such circumstances, the appellate court may reassess the apportionment if it is satisfied that the assessment made by the judge was plainly incorrect. During the hearing of the appeal, counsel for the respondent conceded that the judge's finding that the appellant should bear the greater proportion of the liability for the collision assessed at 75%, ought not to be maintained. In this Court's view this was a proper concession having regard to: (i) the principles applicable to cases where a driver is presented with a sudden emergency and may have taken collision avoidance measures which can be said with hindsight to be an error of judgment for which no finding of negligent driving can be attached; (ii) the absence of any consideration of these factors and applicable principles by the learned judge which led her into serious error; (iii) the way in which the appellant in evidence explained how the collision occurred; (iv) the admissions made by the respondent during cross-examination; and (v) the evidence to be gleaned and the inferences of negligence to be drawn against the appellant from certain of the measurements in the TAR. Accordingly, the learned judge's conclusions on apportionment of liability cannot stand and must be set aside, and this Court conduct its own assessment afresh.

Melvina Fret-Henry v Tortola Concrete Ltd. [2002] EWCA Civ 605 applied; Attorney General v Collingford John et al SVGHCVAP2017/0006 (delivered 20th September 2018, unreported) followed.

8. While the learned judge provided at paragraphs [53] and [54] of the judgment some factual bases upon which she sought to ground her

conclusion that the appellant ought to bear the greater proportion of liability for the collision which she apportioned at paragraph [55] at 75% to the appellant and 25% to the respondent, the learned judge erred in that she failed to fully consider the appellant's narrative and the import of it as to how the collision occurred. The learned judge further erred by failing to give sufficient weight to the evidence that the respondent failed to exercise the necessary degree of care for his own safety when entering from the minor road proceeding across the junction, in that he failed to keep a proper look out, and he ought reasonably to have foreseen that vehicles would be coming north along the busy highway. Weighing all these factors, the respondent must bear the greater responsibility and hence the greater proportion of the liability for the collision, as conceded by counsel for the respondent. In conducting its own assessment, the Court is satisfied that the proper apportionment of liability for the collision is 75% to the respondent and 25% to the appellant. The learned judge's decision on apportionment is therefore set aside. Accordingly, the sums awarded for special damages to both parties and general damages to the respondent only, must be discounted by 75% in case of the award for the respondent and by 25% in case of the award for the appellant.

Case Name:

Lloyd Rhenford Ryan

v

**[1] Agnes Ryan
(deceased now represented by Neville Blake)
[2] Neville Blake
[MNIHCVAP2022/0003]
Montserrat**

Date:

Tuesday, 11th March 2025

**Coram for
delivery:**

**The Hon. Mde. Margaret Price Findlay, Justice of
Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Mr. Jean Kelsick for the 2nd respondent

Issues:

**Civil Appeal - Application to strike out the notice of
appeal – Application for an extension of time to file
notice of appeal – Joint Ownership – Order severing
joint ownership of property between appellant and first
respondent – Registered Land Act of Montserrat –
Principles for the grant of an extension of time and for
the dismissal of an appeal for want of prosecution –
Length of delay – Reasons for the delay – Realistic
prospect of success – Prejudice to the respondent if
the extension of time application is granted**

Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for the extension of time to file
the notice of appeal is granted.**
- 2. The notice of appeal filed on 16th October 2024
is deemed properly filed.**
- 3. The 2nd respondent's application to strike out
the appeal is dismissed.**
- 4. The appeal shall thereafter proceed in
accordance with the Civil Procedure Rules
(Revised Edition) 2023.**
- 5. No order as to costs.**

Reason:

- 1. Granting an extension of time is a discretionary
power of the Court, which will be exercised in
favour of the applicant for good and substantial
reasons. The factors which the Court will
consider in the exercise of its discretion are: (1)
the length of the delay; (2) the reasons for the
delay; (3) the chances of the appeal succeeding
if the extension is granted; and (4) the degree
of prejudice to the respondent if the application
is granted. These factors mirror those that must**

be considered in determining whether to dismiss an appeal.

John Cecil Rose v Anne Marie Uralis Rose SLUHCVAP2003/0019 (delivered 22nd September 2003, unreported) followed; The Barbuda Council v The Attorney General et al ANUHCVAP1994/0012 (delivered 15th January 2004, unreported) followed.

2. In the present case the delay in filing the notice of appeal by the appellant was inordinate and egregious having done so some 9 years and 4 months out of time. In addition, it cannot be said that the reasons for the delay were good and substantial and therefore excusable. However, having regard to all the circumstances and that the prejudice to both the parties are even, but in particular, considering the realistic prospect of demonstrating in the intended appeal that the 2012 Order could not in law sever the joint ownership of the property with the result that the appellant remains the lawful owner of the property by his right of survivorship, the scales are tipped in favour of granting the appellant's application for an extension of time to file the notice of appeal.

Keithley Lake et al v Richard Vento et al AXAHCVAP2016/0012 (delivered 20th June 2019, unreported) considered; Lindsay F.P. Grant et al v Tanzania Tobin Tanzil SKBHCVAP2020/0004 (delivered 6th July 2020, unreported) considered.

APPLICATIONS

Case Name:

Bank of Nevis International Limited

v

**Selecta Insurance and Reinsurance Company
(Caribbean) Limited**

**[NEVHCVAP2023/0017]
(Saint Christopher and Nevis)**

Date: Monday, 10th March 2025

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Nadia Chiesa

Respondent: Ms. Edisha Greene

Issues: Application for conditional leave to appeal to His Majesty in Council - Application for stay of proceedings - Section 99(1) of the Constitution of St. Christopher and Nevis - Appeals to His Majesty in Council as of right - Section 99(2) of the Constitution of St. Christopher and Nevis - Appeals to His Majesty in Council with the leave of the Court of Appeal - Section 99(3) of the Constitution of St. Christopher and Nevis - Appeals to His Majesty in Council with the special leave of His Majesty from any decision of the Court of Appeal in any civil or criminal matter – Failure of the applicant to state whether the application is being made under section 99(1), (2) or (3) of the Constitution - Whether the intended appeal to His Majesty in Council lies as of right - Whether the decision of the Court of Appeal passes the application test of being a final decision - Whether the matter in dispute on an appeal to the Privy Council would be one involving the prescribed value or upwards - Whether the matter in dispute on appeal involved a claim respecting property exceeding the value of \$1,500

Type of Order: Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal to His Majesty in Council is dismissed.
2. The application for a stay of execution of the orders of the High Court and Court of Appeal is accordingly dismissed.
3. Costs to the respondent to be paid by the appellant in the sum of EC\$2,000.00 to be paid within 14 days of the date of this order.

Reason:

The applicant, Bank of Nevis International Limited, filed an application on 25th November 2024 for conditional leave to appeal to His Majesty in Council against an order of the Court dated 14th November 2024. By its order of 14th November 2024, the Court dismissed an interlocutory appeal filed by the applicant, awarded costs to the respondent and discharged a stay of execution of the order which had been granted by the court below on 23rd January 2024. The interlocutory appeal which was dismissed by the Court was an appeal against an order made by the Master dismissing an application to set aside a default judgment entered against the applicant.

In St. Christopher and Nevis, the grant of leave by the Court of Appeal to appeal to His Majesty in Council against a decision of the Court must be either as of right under section 99(1) of the Constitution of St. Christopher and Nevis or with the leave of this Court under section 99(2) of the Constitution. His Majesty may also grant special leave to appeal to His Majesty in Council under section 99(3) of the Constitution. In making an application for leave to appeal to His Majesty in Council, the applicant should state under which of the provisions of the Constitution that it is seeking leave so that the Court can determine whether the applicant qualifies for the grant of leave under that provision. The applicant in this case filed an application for leave to appeal to the Privy Council and an affidavit in support on 26th November 2024 but did not state in either of these documents whether the application was being made under section 99(1), (2) or (3) of the Constitution. The application and affidavit were accompanied by a draft notice and grounds of

appeal and by a draft order but neither of those documents mention section 99 of the Constitution.

It was only in the Skeleton Argument filed by the applicant on 7th February 2025 that the applicant first mentioned section 99. Overlooking the incorrect reference to a non-existent section 99(a) of the Constitution, which starts off paragraph 12 of the Skeleton Argument, the applicant proceeded to quote section 99(1)(a) of the Constitution which provides for an appeal to the Privy Council as of right against final decisions of the Court of Appeal in civil proceedings where the matter in dispute on the appeal to His Majesty in Council is of the prescribed value or upwards. The applicant did not however proceed to argue that the decision of the Court of Appeal sought to be appealed was a final decision or that the matter in dispute on appeal to His Majesty in Council, not the matter in dispute in the court below, was of the prescribed value. The applicant did mention in its application for leave that the matter in dispute on appeal involved a claim respecting property exceeding the value of \$1,500. The applicant however proceeded thereafter to refer to matters concerning damages for breach of contract which matters were not the subject matter of the intended appeal to the Privy Council and not pertinent therefore to the requirements to be satisfied under section 99(1)(a) of the Constitution.

Additionally, the decision of the Court of Appeal, which the applicant was seeking to appeal, did not pass the application test of being a final decision because it was a decision which had it been decided in favour of the applicant and not in favour of the respondent would allow the case to be continued rather than concluded. It was also the case that the matter in dispute on an appeal to the Privy Council would not be one involving the prescribed value which could be clearly discerned from the applicant's proposed grounds of appeal.

In the circumstances, the Court dismissed the application for leave to appeal to His Majesty in Council.

Case Name: Outdoor Living Inc. and Cosmo Import and Export, LLC

v

Reliant Group & Casualty Insurance ICC Ltd

**[SLUHCMAP2023/0002]
Saint Lucia**

Date: Wednesday, 12th March 2025

Coram for delivery: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Sahleem Charles

Respondent: Ms. Kayla Theeuwen and Ms. Eugenia Dickson

Issues: Commercial appeal – Assessment of costs in a commercial claim – Rule 71.13 Civil Procedure Rules (Revised Edition) 2023 – Assessment of costs on discontinuance – Part 37 Civil Procedure Rules (Revised Edition) 2023 – Whether the prescribed costs regime applicable to a discontinuance under CPR 37.7(1) applies to a claim in the commercial division in light of CPR 71.13(1) – Whether the learned trial judge was correct in quantifying costs on the discontinuance using the prescribed costs regime rather than assessing costs – Whether the learned trial judge was correct in stating that there was no discretion to award assessed costs under CPR 37.7(1) – Whether the learned trial judge was correct in summarily assessing costs of the consolidation application

Order: IT IS HEREBY ORDERED THAT:

1. The award of prescribed costs made by the learned judge to the respondent in the sum of US\$122,485.00 for the discontinuance of the Second Claim is set aside.

2. The appellants shall pay the sum of US\$13,223.87 to the respondent for the discontinuance of the Second Claim.
3. The award of costs made by the learned judge in the sum of US \$5,000.00 on the Consolidation Application is affirmed.
4. The appellants shall have two thirds of their costs in the appeal, to be assessed by the judge of the Commercial Division if not agreed within 21 days of the date of this order.

Reason:

1. CPR 71.2(3) applies to a claim in the Commercial Division, but it applies “unless this Part or a practice direction provides otherwise”. CPR 71.13(1) states, “Rules 65.3 to 65.10, 65.11(1) and 65.12 do not apply in a commercial claim under this Part”. The prescribed costs regime is found in CPR 65.5 to 65.7. The plain meaning of CPR 71.13(1) is that the prescribed costs regime does not apply to a claim in the Commercial Division. Furthermore, CPR 71.2(3) makes clear that CPR 2023 and the practice direction relating to any rule apply to a claim on the commercial list unless Part 71 or a practice direction provides otherwise. By virtue of CPR 71.13(1), the prescribed costs regime found in CPR 37.7(1) relating to discontinuance of claims does not apply to a discontinuance of a claim in the Commercial Division. Such costs are to be assessed. The general words of CPR 71.13(1) would disapply the prescribed costs regime in respect of a claim in the Commercial Division. Therefore, there is no need to qualify CPR 37.7 because the inapplicability of the prescribed costs regime is achieved in CPR 71.13(1).

Part 71 Civil Procedures Rules (Revised Edition) 2023 applied; Part 37 Civil Procedure Rules (Revised Edition) 2023 applied.

2. There is no doubt that since the decision of the Privy Council in *Rollin Clifton Bertrand and others v Anthony Elias* following its decision in *Phylliss Rampersad and another v Deo Ramlal and 3 others*, that where the prescribed costs regime applies in respect of a discontinuance of a claim, the court retains a power to order that costs be assessed for good reason and in exceptional cases. Consequently, even if CPR 37.7(1) was applicable, in this case (which it is not), it is wrong to conclude that CPR 37.7(1) “leaves no room for discretion” to order costs to be assessed.

Rollin Clifton Bertrand and others v Anthony Elias [2023] UKPC 34 applied; *Phylliss Rampersad and another v Deo Ramlal and 3 others* [2022] UKPC 50 applied.

3. If a party to litigation does not obtain an order for costs at the time of the making of an interlocutory order by the judge, then the party is not entitled to make a later application for costs in relation to the earlier application. Once an order is settled, perfected and issued by the court, the judge becomes *functus officio*. Having made the order on 20th April 2023, and that order having been perfected, that became the order of the court. Therefore, the learned trial judge was *functus officio*. The assessment of costs fell squarely within the ambit of CPR 71.13(1), which expressly excludes the application of prescribed costs for claims in the Commercial Division.

C.O Williams Construction (Antigua) Ltd v Jennings Building Products Ltd ANUHCVP2010/0009 (delivered 22nd May 2022, unreported) applied; *The Attorney General of Grenada v Peter Charles David et al* GDAHCVAP2006/0034 (delivered 2nd June 2008, unreported) applied.

4. An appellate court should be reluctant to interfere with the exercise of discretion by first instance judges on costs matters and should only interfere if the conclusion of the costs

judge was not open to him. With respect to the costs on the Consolidation Application, the appellants have not shown that: (1) the award was not open to the trial judge; (2) or that the award is unreasonable or disproportionate; or (3) that the learned trial judge did not adopt the proper approach in arriving at her decision, to justify appellate interference. Therefore, the costs awarded in the Consolidation Application does not warrant interference by this Court.

Dion Weekes v Providence Estate Limited
MNIHCVAP2023/0007 (delivered 20th June 2024, unreported) applied.

Case Name:

**[1] Curt John
[2] Kendol Cato**

v

The King

**[SVGHCRAP2020/0007]
[SVGHCRAP2020/0008]**

Saint Vincent and the Grenadines

Date:

Wednesday, 12th March 2025

**Coram for
delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants:

**Mr. Curt John in person
Mrs. Kay Bacchus-Baptiste for Mr. Kendol Cato**

Respondent:

Ms. Allana Cumberbatch

Issues:

**Criminal Appeal – Robbery – Wounding with intent –
Possession of firearm with intent to commit an offence
– Appeal against sentence – Appeal against conviction**

and sentence – Whether the sentence imposed was manifestly excessive – Whether the conviction was unsafe and unsatisfactory

Order:

IT IS HEREBY ORDERED THAT:

- 1. Kendol Cato's appeal against sentence is dismissed and the sentences are affirmed.**
- 2. Curt John's appeal is dismissed and the sentences are affirmed.**

Reason:

- 1. An appellate court will not lightly interfere with a sentence by a trial judge even if it would have imposed a different sentence. The Court must be satisfied that the sentence was manifestly excessive or wrong in principle. The Court must remain mindful that an appeal against a sentence is not a re-hearing but merely an evaluation of the sentence passed, and the steps taken to craft it, to inquire whether the sentencing judge failed to consider or apply any settled principles of law.**

R v Ball (1951) 35 Cr App R 164 applied; Gurrie v The Queen GDAHCRAP2013/0004 (delivered 5th April 2022, unreported) followed.

- 2. When reviewing the sentence of a lower court, an appellate court is guided by the need to promote as far as possible and practical, consistency in sentencing and is enjoined to apply settled principles of law in light of the facts of the case under consideration. The primary factors to be considered in arriving at an appropriate sentence are the aims of sentencing, consideration of relevant mitigating and aggravating factors, sentence range, identification of an appropriate starting point and granting of credit for time spent on remand inclusive of the period spent awaiting sentence and other relevant circumstances. In other words, the sentencing court must have regard to**

all relevant factors in arriving at an appropriate sentence. In cases involving wounding, the court is required to take into account the severity of the attack, the types of injuries sustained and whether the facts indicated any premeditation by the offender.

Desmond Baptiste v R Saint Vincent and the Grenadines Crim Appeal No. 8 of 2003 (delivered 6th December 2004) followed; Winston Joseph v the Queen Saint Lucia Criminal Appeal No. 4 of 2000 (delivered 17th September 2001 and re-issued 31st October 2001, unreported) followed.

3. With regard to the appellant Mr. Cato, having considered the evidence, the submissions and the sentencing remarks of the learned trial judge, the Court considers that for the reasons articulated by him, the learned trial judge was entitled to apply a starting point of 12 years for the offence of wounding with intent. As to the appellant Cato's contention that he ought to have received a discount in light of the circumstances under which he was raised, there is nothing on the record from which to infer that the learned judge did not take those matters into consideration. The mere fact that the learned trial judge mentioned aspects of the Social Inquiry Report that stood out to him does not mean that he did not consider the entire report. In any event, even if he were to incorporate remarks about Mr. Cato's upbringing as a mitigating feature of the offender, it would not have displaced the balance in Mr. Cato's favour in view of several aggravating factors that clearly outweigh the mitigating aspects of his case. The learned trial judge therefore did not err in conducting the sentencing exercise and the sentence of 11 years 11 months and 2

days imprisonment for wounding with intent is justified and is not manifestly excessive. Mr Cato's appeal against sentence is accordingly dismissed and his sentence is affirmed.

4. The Court of Appeal is empowered to overturn a conviction on appeal if it is satisfied that the jury's verdict should be set aside by reason that it is unsafe or unsatisfactory. The Court must consider however, the advantage which a jury has in seeing and hearing the witnesses, and, if all the material was before the jury and the summing-up was impeccable, the Court should not lightly interfere. Mr. John was found guilty by a jury which is the sole arbiter on fact-finding. It was for them to decide whether the prosecution had satisfied them so that they felt sure that Mr. John had committed the offences with which he was charged. In doing so, the jury had to assess all of the evidence including the viability of his alibi defence. Clearly, the jury rejected the alibi and was satisfied that there was no legal or evidentiary basis on which to entertain reasonable doubt about the VC's credibility on relevant aspects of his testimony. The accounts of the witnesses as suggested by Mr. John cannot, without more, negate the account given by the VC which the jury clearly accepted. Further, the summation by the learned judge evidenced no misdirections or non-directions, was reasonable, comprehensive and clear and accordingly, there is no reasonable or justifiable basis on which to legitimately disturb the convictions against Mr. John. His appeal against conviction is therefore dismissed.

Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act Cap. 24 of the Laws of Saint Vincent and the Grenadines

Revised Edition 2009 applied; Nathaniel John v R (1994) 47 WIR 122 applied; Sean Cooper v R (1969) 53 Cr. App R. 82 applied.

5. On the issue of sentence and Mr. John's contention that he did not have the opportunity to review the Social Inquiry Report and was therefore at a disadvantage; Mr. John not only had the opportunity to address the unfavourable aspects of the Report, he confronted them head on. He, however, advanced no contradictory account or helpful explanations that might have operated to improve his fate in terms of the sentence he received. Even if he did not have sight of the Report, he suffered no prejudice as a consequence as his plea in mitigation demonstrates that he clearly had in view the matters the learned judge took into account from that Report. The learned judge considered Mr. John's previous convictions, the absence of remorse, the fact that he acted jointly with Mr. Cato and the fact that the VC was injured by a firearm. He properly found that there were no mitigating features of the offence or offender and appeared to overlook certain aggravating factors such as the premeditated nature of the offence or the prevalence of firearm related offences in the State. Overall, the 12-year sentence is not out of the normal range for this type of offence and does not warrant disturbing. Accordingly, Mr. John's appeal against sentence is dismissed and his sentence is affirmed.

Case Name:

Heron's Flight Inc. (Trading as "Spice Isle Coffee")

v

The Airports Authority

[GDAHCVAP2024/0006]

Grenada

Date: Thursday, 13th March 2025

Coram for delivery: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Melissa Modeste-Singh

Respondent: Ms. Margaret Wilkinson

Issues: Civil Appeal – Appeal against decision of the learned trial judge to dismiss claim for damages for misrepresentation and breach of warranty – Rule 10.5 (3) and (4) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 - Defendant’s duty to set out case - Whether the appellant’s pleading of the representation was denied by the defence or is deemed to have been admitted - Misrepresentation – Whether the expressions “food” and “beverage” included or was meant to include all “soft snacks and soft beverages” – Whether the learned trial judge erred in not applying the ordinary dictionary meaning of the words “food” and “beverage” - Evidence Act of Grenada– Admissibility of certain evidence formerly admissible at common law - Whether the learned judge made any finding on the adduced evidence or statements in violation of the rule against hearsay – Memorandum of understanding – Pre-contract representation - Whether the learned trial judge erred in law in deciding that the memorandum of understanding solely formed the basis for the contract without taking account of the alleged misrepresentation

Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed and the order of the learned judge of the court below dismissing the appellant's claim for damages for misrepresentation and breach of warranty is affirmed.
2. Costs of the appeal to the respondent, such costs to be assessed by a judge of the High Court or Master, if not agreed by the parties within 21 days of the date of delivery of this judgment.

Reason:

1. Rule 10.5(3) and (4) of the Civil Procedures Rules 2000 ("CPR") does not mandate the use by a defendant of the word "denial" in the defence when denying a matter pleaded in a claimant's statement of claim, nor is it stipulated that if not used the defendant would be deemed to have admitted an allegation of fact pleaded in the statement of claim. Moreover, CPR 10.5 does not provide any consequence for a failure or shortcoming in how an allegation in the statement of claim is responded to or denied in the defence. The gravamen and meaning of these provisions is that in the defence, if an allegation is not admitted, it must, by the language used, be clearly denied or the claimant put to strict proof of it. As to the requirement at r.10.5(4) that if there is a denial the defendant must state the reasons for doing so, the respondent did state its reasons at paragraphs 3, 4, 5 and 6 of the defence as to why the representation pleaded by the appellant was not made.

Rules 10.5 (3) and (4) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (CPR) applied.

2. The respondent in its defence, at paragraph 3 in particular, did sufficient to deny making the representation pleaded by the appellant at paragraph 4 of the statement of claim. Furthermore, it is well-established that where a defendant does not admit an allegation in the statement of claim, the effect of this is not an admission of the allegation, but to put the claimant to its proof by adducing evidence at the trial. In this case, there was no actual or implied admission of the representation such that it would operate to absolve the appellant of the burden of proving that the representation as pleaded was in fact made by the respondent and that the said representation had induced the appellant to enter into the MOU. The pleading at paragraph 10 of the defence makes clear that the respondent takes issue with the appellant's case that there was an oral representation that any food and beverage, including snacks and soft beverages, would not be sold on the ground floor or would only be sold on the second floor, and that it undertook to vary its relationship with its existing tenants on the ground floor (save and except for Goddard's Catering Grenada) to facilitate the appellant and its business to be operated from the second floor. It was therefore for the trial judge having heard the evidence and seen the witnesses give their evidence and be cross-examined, to decide as a fact whether the pleaded representation was made by the respondent to the appellant, and whether it was made with the intention of inducing the appellant into signing the MOU. Moreover, (as admitted by counsel for the appellant) this pleading point raised by the appellant on appeal was not raised during the trial below

and no objection was taken by the appellant to the evidence led from the witnesses for the respondent to the effect that no such representation would have been made to the appellant for the reasons which they gave. The said evidence having been given at the trial without objection, it was for the learned judge to assess its evidential value and to determine whether she could accept it or any aspect of it. Accordingly, this issue was joined between the parties at the trial.

3. The meaning attributed by the respondent to the words “food” and “beverage” as found by the learned judge, is neither far-fetched nor so far removed from the sense in which these words are used and understood by a reasonable person or by persons in the position of the appellant and the respondent. Firstly, the prevailing situation at the MBI Airport at the relevant time of the representation included the existence of tenants and concessions selling snacks, soft beverages and alcoholic beverages on the ground floor. Second, the main concessionaire Goddard’s Catering Grenada, the appellant’s admitted competitor was the only concession which the respondent represented will be removed from the ground floor to the second floor. Accordingly, a reasonable person would have understood that the other concessions on the ground floor would not be moved to the second floor or be compelled to stop selling snacks and soft beverages from their outlets on the ground floor. Further, when the word “food” was used by the respondent it did not and could not in all the prevailing circumstances have meant anything that people eat, including soft snacks; and

likewise, when the word “beverage was used it did not mean any type of drink except water.

4. Words may have a particular meaning in a particular locality and among a particular class of persons. In West Indian or Caribbean parlance, as the learned judge alluded to, the words “food and beverage” does not include or is not understood to include a reference to selling snacks and soft drinks, unless so stipulated. When these words are used together, they are usually understood to be a reference to cooked food and to alcoholic drinks. Additionally, this common usage or common meaning of these words in the Caribbean context is given much credence by the fact that historically the other small outlets on the ground floor at the time selling snacks and soft beverages had operated there for some time, without the sale of these items being considered to be in violation of the exclusivity which the main concessionaire, Goddard’s Catering Grenada, then enjoyed. Furthermore, as the respondent’s evidence discloses, no one other than the appellant, had raised any issue with the said small outlets continuing to operate from the ground floor selling snacks and soft beverages.

Shore v Wilson (1842) 9 Cl & Fin 355 applied;
Smith v Wilson (1832) 110 ER 266 applied;
Myers v Sarl (1860) 3 El. & El. 306 applied;
Maddison v Alderson (1883) 8 App Cas 467 applied.

5. The learned judge did not make any finding as to the truth of Mr. Lenworth Gordon’s

evidence in his witness statement in violation of the rule against hearsay. The trial judge did not approach this evidence in that way when making key findings on this issue at paragraphs [41] and [44] of the judgment. Instead, what the judge did was to use the evidence of the prevailing circumstances at the MBI Airport, especially with regard to the tenants on the ground floor selling snacks and soft beverages, and to consider that this took place apparently without demur or objection in the face of the exclusivity then enjoyed by Goddard's Catering Grenada. The judge also considered what was stated in the MOU and the appellant's business plan setting out the products it wished to provide at its Coffee Shop, and the total absence of any statement in said business plan of the representations made to it being that all food and beverages, including snacks and soft beverages will not be sold on the ground floor going forward, in accepting that the words "food" and beverage" were not understood, and were never intended by the respondent to convey to the appellant that all snacks, food and beverages, including soft beverages would only be sold on the second floor. In reasoning to this conclusion, the learned judge also considered in the appellant's business plan that the only 'competition' mentioned was Goddard's Catering Grenada, and no mention was made that it had been represented or that any representation made to it by the representatives of the respondent was understood to mean that the other tenants on the ground floor would no longer be permitted to sell snacks and soft beverages or that they would be moved to the second

floor if that practice was to continue. In making these findings, all of which were open to the judge on the evidence without breaching the rule against hearsay, the learned judge made no finding as to the truth of what was stated at paragraph 4(a) to (f) of Mr. Gordon's witness statement.

Section 36B of the Evidence Act of Grenada Chapter 92 of the Laws of Grenada, Section 36B applied; *Franciscus Petrus Vingehoedt v Stanford International Bank Limited (In Liquidation)* ANUHCVP2014/0030 (delivered 26th January 2015, unreported) applied.

6. The question of whether a pre-contract representation was made by the respondent to the appellant as the latter asserts, what were the terms of the representation, did it induce the appellant to enter into the MOU, was it the kind of representation that was capable of inducing the appellant to enter into the MOU, whether that representation when made was false or incorrect, was it made innocently, fraudulently, negligently or recklessly as to its correctness, are all questions of fact for the court to decide. In the instant matter, the learned judge seems to have accepted that a representation was made by the respondent to the appellant that no "food and beverages" will be sold on the ground floor. However, the judge decided that the meaning put on those words or that phrase as contended for by the appellant, was not proven on a balance of probabilities, having considered and analysed the evidence. This evidence included the evidence of Ms. Malisiewicz for the appellant and that of Mr. Gordon for the respondent, the correspondence passing between the parties prior to the filing of the appellant's claim, and the documentary evidence including the two MOUs and the appellant's

business plan, none of which speak to any representation or to the appellant's understanding that the phrase "food and beverage" included any kind of snacks or soft beverages. The upshot of all this is that the learned judge did not accept that any representation made to the appellant that "food and beverage" would not be sold on the ground floor encompassed and was meant or intended to include snacks and soft beverages. This finding, which this Court ought not to interfere with, meant that there was no breach of the representation pleaded by the appellant.

Case Name:

Robert Owen Haynes

v

Patricia Eudora Welsh

[SKBHCVAP2018/0008]

Saint Christopher and Nevis

Date:

Thursday, 13th March 2025

**Coram for
delivery:**

**The Hon. Mde. Margaret Price Findlay, Justice of
Appeal**

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal

**The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Leon Charles

Respondent: Ms. Midge Morton

Issues:

**Civil appeal – Constructive trust – Beneficial interest
of a property – Ancillary relief – The Matrimonial
Causes Rules – The Divorce Act – Property
Adjustment following separation or divorce – Whether
the learned trial judge erred in law in finding that there
was evidence that the parties intended to share the
beneficial interest in the matrimonial home otherwise**

than in equal shares – Whether the learned trial judge was correct in ordering the appellant to pay the respondent 50 per cent of the purchase price of the Vehicle

Order:

IT IS HEREBY ORDERED THAT:

- (1) The order of the learned trial judge that: (1) the respondent is entitled to a 70% share in the Property; and (2) the appellant is entitled to a 30% share in the Property found at para [63], subparagraphs (c)-(h) are set aside.**
- (2) The appellant and the respondent are each entitled to a 50% share in the Property.**
- (3) The Property shall be valued by a reputable and independent valuator to be agreed upon by the parties within one month of the date of this order.**
- (4) The amount of the maintenance arrears as at the date of this order are to be deducted from the amount of the appellant's equity in the value of the Property.**
- (5) The respondent shall be at liberty to purchase the appellant's 50% share in the net value of the Property, taking into account the amount of the outstanding mortgage and maintenance arrears within three (3) months of the date of this order. The appellant shall be permitted to remain in the Property until receipt of the value of his 50% share in the net value of the Property.**
- (6) If the respondent is unable to purchase the appellant's share of the Property within the time stipulated as above, the appellant shall be at liberty to purchase the respondent's 50% share in the net value of the Property, calculated as outlined in paragraph (3) above within nine (9) months of the date of this order.**

- (7) If at the end of this period neither party is able to purchase the other's share in the value of the Property, the Property shall be sold and the net proceeds divided in the shares as outlined above and taking into account the outstanding mortgage as well as outstanding maintenance arrears.
- (8) The order of the learned trial judge that the appellant pay the respondent 50% of the purchase price of the Vehicle is set aside.
- (9) The Vehicle shall be valued by a reputable and independent valuator to be agreed upon by the parties within one month of the date of this order.
- (10) The Vehicle shall be sold, and the net proceeds be divided equally between the parties unless either party wishes to pay the other party their share of the proceeds of the sale of the Vehicle.
- (11) The appellant shall have his costs in the appeal to be paid by the respondent to be assessed if not agreed within 21 days of today's date.

Reason:

1. When a notice of application for ancillary relief is made to the court pursuant to the Matrimonial Causes Rules, the applicable law is the common law since the Divorce Act of Saint Kitts and Nevis does not provide a statutory basis on which any claims for property adjustment or settlement can be made.

The Matrimonial Causes Rules (1937 No. 1113) applied; The Divorce Act Cap 12.03 of the revised Laws of Saint Christopher and Nevis considered.

2. Concerning the case of a house transferred into the joint names of a married or unmarried couple, where both are responsible for any

mortgage, and where there is no express declaration of their beneficial interests, the starting point is that equity follows the law, and they are joint tenants both in law and in equity. That presumption, however, can be displaced by showing (a) that the parties had a different common intention at the time when they acquired the home, or (b) that they later formed the common intention that their respective shares would change. Common intention is to be deduced objectively from their conduct and in cases where it is clear either (a) that the parties did not intend joint tenancy at the outset, or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property.

Jones v Kernott [2011] UKSC 53 applied; Stack v Dowden [2007] 2 AC 432 applied; Fowler v Barron [2008] EWCA Civ 377 considered.

3. On the evidence and findings of the learned trial judge, there was no evidence that the appellant and the respondent did not intend a joint tenancy at the outset. Similarly, there was no evidence before the learned trial judge that the appellant and the respondent had changed their original intention to share the beneficial interest equally. Having found that there was no evidence of express or inferred intention, it meant that equity follows the law, and the presumption that appellant and the respondent are joint tenants both in law and in equity, was not displaced.

Jones v Kernott [2011] UKSC 53 applied.

4. Although the learned trial judge did not use the term 'resulting trust', her focus exclusively on the financial or other contributions to the Property lead to the conclusion that she erred in

her finding that the significantly greater financial contribution made by the respondent should be reflected in according the respective beneficial interest of the parties in the matrimonial property. It was not disputed that the respondent had a higher earning power than the appellant. The evidence before the learned trial judge was that the respondent contributed financially more to the cost of acquiring and constructing the matrimonial home and the respondent paid more in mortgage payments than the appellant. The decision in *Stack v Dowden* however makes clear that the court must have regard to all the circumstances which may shed any light on the shared intentions of the appellant and the respondent concerning ownership of the Property. The critical factor is not only the parties' financial contributions. The learned trial judge therefore erred by failing to consider all the circumstances which would throw light on the shared intentions of the parties. The focus should not have been on the fact that the parties made unequal contributions to the cost of acquiring the Property but the inferences that should have been drawn concerning the shared intentions to be derived from an overall evaluation of the evidence.

Stack v Dowden 2007] 2 AC 432 applied.

5. The sole ground upon which the presumption of equal beneficial interests could have been challenged was that the appellant and respondent intended to share the property's beneficial interest in proportion to their financial contributions. As this challenge failed, the default of equal beneficial interests remained, meaning the appellant and respondent shared the property equally, both legally and equitably. The court's authority to intervene rests on the parties' common intention, whether explicitly stated or implied. The trial judge therefore erred by focusing solely on financial contributions and adopting an overly narrow perspective.

Case Name:

The Attorney General

v

**Faustinus Venoid George
[SLUHCVAP2023/0019]
Saint Lucia**

Date:

Friday, 14th March 2025

**Coram for
delivery:**

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]**

Appearances:

**Appellant: Ms. Kimberley K. Williams holding for Mr. George
Charlemagne**

Respondent: Mr. Alvin St. Clair

Issues:

Civil appeal – Section 130(1) of the Customs (Control and Management) Act – Power to detain goods – whether Customs has the authority to detain goods for investigative purposes under section 130 of the St. Lucia Act or otherwise - Damages - Whether the learned judge correctly assessed the damages awarded to the respondent

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The respondent is entitled to his costs in the court below to be assessed if not agreed and to his costs on appeal assessed at 2/3 of the costs in the court below.**

Reason:

- 1. A reading of section 130(1) of the St. Lucia Act implies that the right to seize or detain goods can only occur, where the goods in question are liable to forfeiture. The officers cannot detain goods under mere suspicion or having reasonable grounds; there must be an objective**

conclusion that the goods are liable to forfeiture in accordance with provisions in the Act.

Section 130 (1) of the Customs (Control and Management) Act Cap 15.05 of the Revised Laws of Saint Lucia applied; R (on the application of Eastenders Cash and Carry) and R (on the application of First Stop Wholesale) v HMRC [2014] UKSC 34 distinguished.

2. The detention of a vehicle by Customs without more constitutes an interference with the right to property under sections 1 and 6 of the Saint Lucia Constitution Order and such a detention is only valid if it serves a legitimate public purpose and is carried out under the authority of law in a manner that is reasonably justified under the law. An incidental power to detain under the St. Lucia Act arises when Customs exercises its power to examine goods under section 91. Further, the power of examination in section 91 of the St. Lucia Act in which the power to detain is implied, by its wording seems to apply to uncleared goods only. In essence, while section 91 itself doesn't explicitly provide a power to detain, it does imply that, during an examination, goods may be detained temporarily for the purposes of that examination. The Eastenders case is therefore distinguishable from the current circumstances under the St. Lucia Act because the UK Act as it then was, provided a broader statutory foundation for detention during the examination process whereas the St. Lucia Act requires a more direct connection to the goods being liable to forfeiture under specific provisions. Customs cannot rely on the express power under section 130, and section 91 could not be invoked since the vehicle had already been cleared and the duties had been paid as required under section 65. There was therefore no lawful basis for the detention.

Section 91 of the Customs (Control and Management) Act Cap 15.05 of the Revised Laws of Saint Lucia applied; R (on the application of Eastenders Cash and Carry) and R (on the application of First Stop Wholesale) v HMRC [2014] UKSC 34 distinguished; Jacobsohn v Blake and Compton (1844) 6 Man & G 919; 13 LJ CP 89 considered.

3. An appellate court will only overturn a trial judge's findings if it identifies a material error in the judge's reasoning or evaluation of the evidence. The appellate court also generally refrains from interfering with the judge's findings of fact, particularly when those findings are based on the judge's direct assessment of witnesses and will only intervene if there is a clear error in the way the trial judge evaluated the evidence. Based on the evidence presented before the learned judge and his assessment of the witnesses on the issue of damages, there is no error in his reasoning.

Margaret Blackburn v James Bristol
GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) applied.

APPLICATIONS AND APPEALS

Case Name:

Estate of Linton Liburd SNR, deceased

v

Krysta Liburd - Clarke
(in her capacity as personal representative of the
estate of Herman Liburd)

[NEVHCVAP2024/0014]
(Saint Christopher and Nevis)

Date:

Monday, 10th March 2025

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Leon Charles

Respondent: Mr. Errol Williams

Issues: Application for leave to appeal - Judge's refusal of application to strike out the claim - Whether intended appeal has a realistic prospect of success - Whether the respondent/claimant cannot prove matters asserted in her claim by admissible evidence due to the death of the parties - Application for a stay pending determination of the appeal - Whether appeal would be rendered nugatory if a stay is not granted

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal is granted.
2. The applicant shall file a notice of appeal within 21 days of today's date.
3. The application for a stay of the proceedings below is refused and accordingly dismissed.
4. Further steps in the appeal shall follow the provisions of the Civil Procedure Rules (Revised Edition) 2023.
5. Costs to the respondent in the agreed sum of \$1,500.00

Reason: Before the Court was an application for leave to appeal the decision of the learned judge in the court below dated 3rd July 2024 in Claim no: NEVHCV2024/0026 by which the learned judge refused to grant the applicant's notice of application to strike out the claim filed on 17th April 2024 and ordered that a defence be filed by 31st July 2024. The second part of the order had been overtaken by further steps taken in the

proceedings in the court below by which an extension of time had been granted for the filing of the defence and a further application had been made once the application for leave to appeal had been filed to extend the time further for the filing of the defence, which application had not been yet heard.

The second limb of the applicant's application was for a stay of the proceedings below pending the determination of the appeal. The application was supported by the affidavit of Dr. Linton Liburd Jr which was filed on 27th July 2024. The Court also had before it, and considered the written submissions - firstly those filed by the applicant on the 23rd September 2024 in support of the application and secondly the written submissions filed on behalf of the respondent on 24th September 2024 opposing the application for a stay - the application for leave being an ex parte application. The Court also had the benefit of reading and digesting the applicant's reply submissions which were filed on 7th March 2025.

Application for leave to appeal

The Court considered the grounds of appeal and considered whether the applicant had satisfied the well-known test for leave to appeal. The applicant for leave to appeal must demonstrate that the appeal has a realistic prospect of success as opposed to a fanciful prospect of success. In the applicant's submissions, he has pointed to 19 grounds of appeal which were helpfully condensed under 3 primary headings:

- 1) The claim itself has no realistic prospect of success;
- 2) The applicant/defendant is not a proper party to the proceedings.
- 3) The application of the relevant Limitations Act and the delay in bringing the claim.

Having considered those matters and the submissions and the applicable case law, the Court was satisfied that the applicant had met the threshold for the granting of leave to appeal. Accordingly, the application for leave was granted and the applicant ordered to file its notice of appeal within 21 days of the date of this decision.

Application for stay pending appeal

On this limb of the application, the Court noted the bases of objection set out in the respondent's skeleton argument. The Court also gave consideration to the principles applicable to the granting of a stay of proceedings, the responses which learned counsel for the applicant gave to the Court's questions and having considered those matters, was not satisfied that the appeal would be stifled or rendered nugatory if a stay is not granted of the proceedings below. In coming to that conclusion, the Court also considered the fact, as disclosed by counsel for the applicant that there is a pending application in the Court below for an extension of time within which to file their defence and that the basis of the stay was, principally, that if the appeal was successful and there was no stay of the proceedings below the applicant would have incurred additional costs in filing their defence and taking other steps in the proceedings below. The Court was not satisfied that that reason met the threshold of rendering the appeal nugatory or stifling the appeal. Accordingly, the application for a stay of the proceedings below was refused and accordingly dismissed. On consequential matters, the parties agreed to costs to the respondent in the sum of \$1,500.00.

Case Name:

**[1] Mohammad Sadek Atassi
(by his attorney Malek Atassi)
[2] Chirin Atasi
(by her attorney Malek Atassi)**

v

**[1] Raghed Murtada
[2] Live Nevis Development Limited
[3] The Bank of Nevis Limited**

**[SKBHCVAP2024/0010]
(Saint Christopher and Nevis)**

Date:

Monday, 10th March 2025

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]

Appearances:

Applicants: Ms. Angela Cozier

Respondents: No appearance

Issues: Application for leave to appeal - Whether the applicant has met the threshold for a grant of leave to appeal - Whether the applicant has good prospects of success on appeal

Type of Order: Adjournment

Result/Order: IT IS HEREBY ORDERED THAT:

1. The applicant shall file the electronic bundle within 14 days of the date of this order containing all of the pleadings and all other relevant documents including the application in the court below and affidavits in support and in opposition.
2. Further hearing of the application is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis.

Reason: Before the Court was an application filed by the applicant on 27th February 2025 seeking leave to appeal the order of Saunders M dated 5th August 2024. During the course of the hearing however, it became apparent to the Court that a determination of the application would not be possible due to certain documents having not been filed such as the hearing bundle and submissions that had not been filed by the applicant. The Court noted that the submissions that ought to have been filed by 7th February 2025 were filed the morning of the hearing and that the hearing bundle that ought to have been filed by 21st February 2025 had not been filed at all. In the circumstances, the Court was minded to adjourn the matter and directed the

applicant to file the required documents upon which a determination of the leave application could be made.

Case Name:

Beachfront Condominium Holdings Ltd

v

Nelson Spring

**[SKBHCVAP2024/0021]
(Saint Christopher and Nevis)**

Date:

Monday, 10th March 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]**

Appearances:

Applicant: Mr. Terence Byron

Respondent: No appearance

Issues:

Application for leave to appeal - Whether the applicant has satisfied the threshold for leave to appeal- Whether the appeal has a realistic prospect of success

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the applicant, Beachfront Condominium Holdings Ltd., to appeal against the order of the learned judge dated 29th November 2024.**
- 2. The applicant shall file a notice of appeal within 21 days of the date of this order, and the appeal shall thereafter proceed in accordance with Part**

62 of the Civil Procedure Rules (Revised Edition) 2023.

Reason:

The applicant, Beachfront Condominium Holdings Limited, filed an application on 23rd December 2024 seeking leave to appeal the order of the learned judge dated 29th November 2024 whereby the judge ordered that: 1) the judgment summons is adjourned to 3rd February 2025 and 2) counsel for the judgment creditor has liberty to amend the judgment debtor by 31st January 2025 (*sic*). The Court noted that what was meant was to have the liberty to amend the judgment summons by 31st January 2025.

The applicant was the judgment debtor, and the respondent was the judgment creditor in the court below. A judgment summons was filed by the respondent on 8th November 2024 seeking to enforce payment of money owing by the judgment debtor to the judgment creditor pursuant to a consent order entered into between the parties on 9th December 2022. On 27th November 2024, the applicant filed a notice of opposition to the judgment summons on several grounds, including that the judgment summons was inapplicable and misconceived and should be struck out, having been filed against a company. The applicant contended that Part 52 of the Civil Procedure Rules (“CPR”) deals with applications to commit a judgment debtor, and as the applicant was a company, it cannot be committed, thus Part 52 was inapplicable, and the judgment summons ought to have been dismissed.

The judgment summons came up for hearing before the learned judge on 29th November 2024, whereupon the judge adjourned the judgment summons to 3rd February 2025 and granted leave to the judgment creditor to amend the judgment summons by 31st January 2025. On 23rd December 2024, the applicant filed an application with an affidavit in support seeking

leave to appeal against the order of the learned judge made on 29th November 2024 by which the judge adjourned the hearing of the judgment summons and gave leave to the respondent to amend the judgment summons. The grounds of the application were as follows: 1) the learned judge erred in law in failing to dismiss the Part 52 judgment summons and to treat it as an abuse of the process of the court in relation to the intended appellant as a body corporate, which is entirely outside of the scope of Part 52 of the CPR; 2) the learned judge failed to appreciate that the said judgment summons is misconceived and is incapable of being amended so as to overcome its fundamental inapplicability to a body corporate; 3) in any event, the learned judge erred in making the impugned orders of its own initiative without giving the intended appellant a reasonable or any opportunity to make representations.

The application for leave to appeal came before a single judge of this Court on 21st January 2025, whereupon the single judge ordered that the application be set down for hearing before the full court on a date to be fixed by the Chief Registrar. The matter was set down by the Chief Registrar for hearing, and a notice of hearing was issued on 23rd January 2025. On 21st February 2025, the applicant filed skeleton submissions in support of its application for leave to appeal.

Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023, provides that leave to appeal may be given only where the Court considers that the appeal will have a realistic prospect of success or that there is some other compelling reason why the appeal should be heard. In its skeleton arguments, the applicant stated that the appeal could have a realistic prospect of success. It may be argued that the order of the learned judge in the court below to adjourn the hearing of the judgment summons and to give leave to

the judgment creditor to amend it are case management decisions which an appellate court ought not to disturb. However, where, as was submitted by the applicant in this case, the amendment which the court gave leave to the judgment creditor to make, may give jurisdiction to the court which it did not have in the first place or may give it power outside of the scope of the Civil Procedure Rules and Practice Directions this extends beyond mere case management, and there is a realistic prospect of success on an appeal of the order giving leave to amend. To be clear, judgment summonses are dealt with in Part 52 of the CPR. Rule 52.1 of the CPR states that “this part deals with applications to commit a judgment debtor for non payment of a debt where this is not prohibited by any relevant enactment”. Practice Direction No. 2 of 2007 deals with judgment summonses and states that “this part deals only with committal of a judgment creditor for the enforcement of money judgments”. It was difficult not to conclude that the validity of a judgment summons filed against a registered company, in this case, Beachfront Condominiums Holdings Limited, must at least be sufficiently questionable as to give rise to a realistic prospect of success on appeal. The Court noted that it did not find it necessary to deal with other infractions of the judgment summons procedures alleged by the applicant. The validity of the judgment summons filed against the company was sufficient to give rise to a realistic prospect of success of an appeal on this issue.

The Court also found that it was not necessary to deal with the revelations by the applicant in paragraph 9(1) and 9 (2) of its submissions, the application before the Court was an application for leave to appeal the order made by the learned judge on 29th November 2024, and leave had been granted. Accordingly, leave was granted to Beachfront Condominium Holdings Ltd to

appeal against the order of the learned judge dated 29th November 2024.

Case Name:

**ICM SPC on behalf of Ancile Special
Opportunity and Recovery Fund Segregated
Portfolio**

v

**[1] Ryan Paul Jarvis
[2] Rachelle Frisby**

**[BVIHCMAP2024/0019]
(Territory of the Virgin Islands)**

Date:

Monday, 10th March 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St.C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]**

Appearances:

Applicant: Mr. Brian Lacy and Ms. Emily Rivett

Respondents: Mr. Jeremy Child and Ms. Jhneil Stewart

Issues:

Application for urgent interim stay - Whether the refusal to grant a stay would result in unfair prejudice and irreversible harm to the applicant - Whether the ongoing appeal would be stifled if a stay is not granted - Whether the ongoing appeal would be rendered nugatory if the stay is not granted

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The decision of the Honourable Justice Mangatal (Ag.) dated 30th May 2024, as**

subsequently amended on 11th June 2024 (the “Judgment”) and the subsequent order of the Honourable Justice Webster (Ag.) (the “Order”) reflecting the Judgment, be stayed pending the determination of the ASOR substantive stay application.

2. Such stay application is to be set down by the Chief Registrar at a date to be determined.
3. Costs of the interim stay application to be costs in the substantive stay application.

Reason:

Before the Court was an urgent application for an interim stay filed on 28th February 2025 (“ASOR Interim Stay Application”) pending the determination of the stay application also filed on 28th February 2025 (“ASOR Substantive Stay Application”). The Court read the applicant’s skeleton arguments filed on 28th February 2025 and the respondent’s note filed on 6th March 2025. Further the Court heard both counsel for the applicant and counsel for the respondent and determined that the ASOR Interim Stay Application should be granted. The Court ordered that the decision of Mangatal J (Ag.) dated 30th May 2024 as subsequently amended on 11th June 2024 and the subsequent order of Webster J (Ag.) be stayed pending the determination of the ASOR substantive stay application. The Court further ordered that costs of the ASOR Interim Stay Application be the costs in the ASOR Substantive Stay Application.

Case Name:

Tyrique Jones

v

**Commissioner of Police
[SKBMCRAP2023/0003]
(Saint Christopher and Nevis)**

Date:

Tuesday, 11th March 2025

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Applicant: Mr. Craig Tuckett with him Ms. Nadia Chiesa

Respondent: Mr. Leslie Roberts

Issues:

Application for conditional leave to appeal to His Majesty in Council - Section 99(1)(c) of the St Kitts and Nevis Constitution - Appeal as of right - Appeal against sentence - Calculation of remand time in sentence – Whether the intended appeal raises a genuinely disputable question of the interpretation of the Constitution

Type of Order:

Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for conditional leave to appeal to His Majesty in Council is dismissed.**
- 2. No order as to costs.**

Reason:

By notice of application filed on 6th December 2024, Tyrique Jones, the applicant, sought leave pursuant to section 99(1)(c) of the Constitution of the Federation of Saint Christopher and Nevis to appeal to His Majesty in Council. The decision sought to be appealed was the decision of the Court of Appeal dated 15th November 2024 in the matter of Tyrique Jones v The Commissioner of Police SKBMCRAP2023/0003 wherein the Court dismissed the applicant's appeal against the sentence of three years' imprisonment for the offences of possession of an unlicensed firearm and possession of ammunition contrary to section 20(1)(b) of the Firearms Act. The sentences were imposed by the learned magistrate on 17th April 2023. The nub of the intended grounds of appeal as set out in the draft notice of appeal may be summarised as follows: 1.) the learned senior magistrate's decision to include the remanded time of the applicant in the

calculation of the sentence on 17th April 2023; 2.) the learned senior magistrate cited the 2018 Firearms Sentencing Guidelines as giving the mandate to include the remand time of the applicant in calculating the sentence; 3.) if the magistrate deducted the time on remand instead of the prison authorities, it means that the applicant remanded would serve more time than those on bail; 4.) based on previous cases, the applicant has a substantive and procedural legitimate expectation to have his time on remand be calculated by the prison administration; 5.) that for the magistrate to have deducted the time served on remand by the applicant was a breach of the applicant's right to liberty guaranteed by sections 3(a) and 5(1)(b) of the Constitution of the Federation of Saint Christopher and Nevis ("the Constitution").

The Court considered the provisions of the Constitution invoked to ground the application. Section 99(1) provides that an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases: "... (c) final decisions in any civil or criminal proceedings that involve a question as to the interpretation of this Constitution." In criminal matters, appeals to His Majesty in Council are as of right in the case of a final decision of the Court of Appeal which involves a question of the interpretation of the Constitution. However, where leave is sought under section 99(1)(c) as of right, the Court's gatekeeping role is to determine whether the intended appeal raises a genuinely disputable question of the interpretation of the Constitution: Frater v The Queen [1981] 1 WLR 1468, Alleyne Forte v AG of Trinidad and Tobago and others [1998] 1 WLR 68 and R v Lewis (Mitchell) [2007] CCJ 3 (AJ). In other words, its role is to establish whether a right to appeal exists.

The provisions of the Constitution which the applicant submitted are in need of interpretation are: 3(a) and 5(1)(b). Section 3(a) provides that: "Whereas every person in Saint Christopher and Nevis is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place of origin, birth, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for

the public interest, to each and all of the following, namely, life, liberty, security of the person, equality before the law and the protection of the law”. Section 5(1)(b) provides that: “a person shall not be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say in execution of the sentence or order of a court, whether established for Saint Christopher and Nevis or some other country, in respect of a criminal offence of which he or she has been convicted”.

A cursory look at the notice of appeal filed on 6th July 2023 disclosed that it contained only two grounds of appeal, namely: a) that the learned magistrate erred in law and/or misdirected herself by failing to sentence the applicant less than the co-defendant on the same facts; and b.) that the learned magistrate erred in law and/misdirected herself in the application of the Firearms Sentencing Guidelines by determining that the level of the offence was Category 3, Level A allocating only 50% discount of the maximum sentence being credited instead of allocating 70% discount of the maximum sentence being credited. In short, the first ground of appeal took issue with the fact that the learned magistrate imposed the same sentence on the applicant as his co-defendant while the second contends that the learned magistrate erred in the application of the sentencing guideline in determining the level of the offence. The notice of appeal contained no other grounds and in particular, no such ground upon which the application before the Court was predicated. In this regard, the Court noted that the provisions of section 176 of the Magistrate’s Code of Procedure Act Cap 3.17 provides that an appeal is limited to reasons given in the notice of appeal. It provides: “At the hearing of an appeal on motion it shall not be competent for the appellant to go into, or to give evidence of, any other reasons for appeal than those set forth in his or her notice of appeal: Provided that where, in the opinion of the Court of Appeal, other reasons for appeal than those set forth in the notice of appeal should have been given, or the statement of reasons is defective, the Court of Appeal may in its discretion allow such amendments to the notice of appeal upon such

conditions as to service upon the respondent and as to costs as the Court may think fit.”

The Court noted that there was no record that the applicant sought to amend his ground of appeal or of the Court of its own motion making any order granting leave to amend the said notice of appeal to declare any other ground of appeal. What was observed is that about one year after the filing of the notice of appeal, the applicant filed a document labelled “Amended Submissions” on 16th May 2024 in which he purported to list five grounds of appeal. The intended ground of appeal to His Majesty in Council was listed as the fifth ground of appeal in that document and read: “that the learned magistrate erred in law and/or misdirected herself by subtracting the appellant’s time on remand instead of it being done by the Commissioner of Corrections in accordance with section 200 of the Prison Act Cap 19.05 of the Revised Edition 2009 of the Laws of the Federation of Saint Christopher and Nevis”.

The Court expressed that it could hardly be said that no rules of court or statute governing appeals provides for the amending of a notice of appeal in skeleton arguments or submissions; this being accepted by counsel for the applicant. Be that as it may, it was noted by the Court, and conceded by Ms. Chiesa, there was no mention in that purported ground of appeal of any provision of the Constitution, far less one giving rise to a genuinely disputable question as to its interpretation. Indeed, the word “constitution” was not used once in the document.

The Court also considered the record of the appeal hearing and noted that there was no discussion as to the interpretation of any constitutional provision. Unsurprisingly, the Court’s digest recording the Court’s decision, made no mention of such an issue.

The Court noted further that the respondent’s filed submissions dated 13th November 2024, quite properly, were confined to addressing only the two grounds of appeal contained in the notice of appeal. It was therefore untrue as averred at paragraph 2 of the applicant’s skeleton arguments in support of the

application for leave to appeal, that: “the appeal was not defended by the respondent”. It was also untrue to say as averred at paragraph 7 of the draft notice of the grounds of appeal that: “in any event, and as evidenced before the first instance magistrate and the Court of Appeal in respect of the respondent, they agreed that remanded time should be calculated by the prison”. No such agreement was recorded. The Court expressed grave concern that such false assertions could be made in the proceedings where it is a matter of record that the respondent in his submissions invited the Court to dismiss the appeal as having no prospect of success. The Court noted, that in fairness to Ms. Chiesa, she was not counsel in the appeal and was acting on the instructions of Mr. Tuckett who was counsel in the appeal.

The Court also noted that since the respondent was not permitted to make oral submissions on the hearing of the appeal because of the late filing of its written submissions, it was unsurprising that the record of the hearing does not reflect that the respondent made any oral concessions in relation to any ground of appeal. Frankly put, there is no record of any concession being made by the respondent on the intended ground of appeal or any ground of appeal. Further, even if the respondent had made any such concessions, the Court was of the view that it would be of no moment as it is the task of the Court to determine whether the applicant had satisfied the constitutional requirements for the grant of leave to appeal to His Majesty in Council.

Having reviewed the record of the hearing and notice of appeal, for the reasons outlined in this decision, the Court was satisfied that the Court of Appeal was not asked to and accordingly did not consider any provisions of the Constitution, nor did it make any decision that involved the interpretation of the Constitution. The applicant’s grounds of appeal as reflected in the notice of appeal and even the purported ground 5 contained in the document titled “Amended Submissions” did not refer to any constitutional provisions or any breach of any constitutional provisions. They did not identify any issue that involved or called for an interpretation of

any provisions of the Constitution. The issue was dealt with on appeal as a question of the correctness of the sentencing methodology of the learned magistrate. Whether the learned magistrate was right to deduct the time spent on remand from the sentence which she had arrived, does not involve an interpretation of either section 3(a) or section 5(1)(b) of the Constitution as conceded by Ms. Chiesa. Taking heed of the dicta of Lord Diplock in *Frater v The Queen*, the Court must be astute that applications for leave to appeal to His Majesty in Council that invoke the provisions equivalent to section 99(1)(c) “really involve a genuinely disputable question of the interpretation of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal to His Majesty in Council as of right”. In effect, the applicant is seeking conditional leave to appeal an issue that did not engage the Court of Appeal or in which the Court did not and could not express any opinion. For these reasons, the Court held that no right of appeal arose from section 99(1)(c) of the Constitution for leave to appeal to His Majesty in Council as the appeal did not involve the interpretation of the Constitution of Saint Christopher and Nevis. The application was therefore dismissed with no regards to costs. The Court indicated that the parties would be furnished with a copy of the written judgment.

Case Name:

James Liburd

v

**[1] Noel Errol Liburd Junior
[2] Noel’s Courtesy Garage
Limited**

**[NEVHCVAP2022/0010]
(Saint Christopher and Nevis)**

Date:

Tuesday, 11th March 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of
Appeal**

The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellant: Mr. Brian Barnes with him Mr. Adrian Daniel

Respondents: Mr. Kris Liburd

Issues:

Civil appeal - Company shareholding - Appeal against the order *inter alia* appointing the 1st respondent as managing director and removing the appellant as a director - Whether the learned judge failed in according due regard to the ownership of the appellant's 50% shareholding in the 2nd respondent company on the basis of capitalization of the company and participation in the management of the company - Whether the learned judge erred in discounting the contribution made by the appellant to the development of the company by way of his profession as a contractor, in the form of construction done on the premises - Whether the learned judge erred in accepting evidence of construction with no corroboration from any independent witness - Whether the learned judge erred in finding the appellant's ownership was a mere formality - Whether the learned judge erred in accepting the 1st respondent's account of the company's formation, despite the fact that the 1st respondent was not yet born at the time of formation of the company - Whether the learned judge erred by considering the alleged 2001-2003 changes to the company's shareholding and directorship, despite the lack of documentary evidence as to any meeting or resolution supporting the appointment of directors and issuance of additional shares - Whether the learned judge erred in finding that the 1st respondent holds the majority shares in the company - Whether the learned judge erred in his application of section 241 of the Companies Ordinance by seeking to turn over the company to the 1st respondent in the absence of a claim for such relief on the pleadings

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Rams Trading Limited

v

Mercyer Gumbs

**[SKBMCVAP2022/0002]
(Saint Christopher and Nevis)**

Date:

Wednesday, 12th March 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

**Respondent/
Appellant:**

Ms. Hadya Dolphin

**Applicant/
Respondent:**

Mr. Leon Charles

Issues:

**Application to strike out the appeal - Whether the
appeal should be struck out on the ground of want of
prosecution - Notice of Withdrawal**

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to withdraw and discontinue the appeal filed on 21st December 2022.**
- 2. The appeal therefore stands dismissed in accordance with the Civil Procedure Rules (Revised Edition) 2023.**

3. The appellant shall pay the respondent's costs in the sum of EC\$2,000.00 to be paid within 30 days of today's date.

Reason:

The appellant filed the notice of appeal on 21st December 2022. Pending before the Court was an application to strike out the notice of appeal filed on 9th October 2024. The Court was presented with a Notice of Withdrawal of the appeal filed on 10th March 2025. The Notice of Withdrawal reflected that costs were agreed between the parties in the sum of EC\$2,000.00. The Court, having heard counsel for the appellant and counsel for the respondent, ordered that leave be granted to withdraw and discontinue the appeal. The appeal therefore fell away and stood dismissed. Costs were agreed between the parties in the sum of \$2,000.00.

Case Name:

Regulator of International Banking

v

**[1] Petrodel Investment Advisers
(Nevis)Ltd**

[2] Michael J Prest

[3] Bank of Nevis International Limited

**[NEVHCVAP2023/0008]
(Saint Christopher and Nevis)**

Date:

Wednesday, 12th March 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Ms. Jean M. Dyer and Ms. Shyra I.W. Manners

Respondents: No appearance for the 1st and 2nd respondents

Ms. Nadia Chiesa for the 3rd respondent

Issues:

Civil Appeal - Judicial Review - Appellate intervention in the learned judge's exercise of discretion - Nevis International Banking Ordinance, 2014 - Powers of the banking regulator - Whether the banking regulator has authority to issue a cease and desist letter - Whether the banking regulator has authority to impose fines and penalties - Whether the power to impose fines and penalties can be implied from the scheme of the NIBO - Costs - Whether the term 'any liability' is sufficiently broad to include liability for costs and whether the learned judge erred in awarding costs against the appellant

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Counsel for the parties is to provide further written submissions which are to be lodged and exchanged on or before 28th March 2025 addressing the following discrete issues:**
 - i. with respect to the application of regulation 12 (4) of the Nevis International Banking Ordinance, 2014 ("NIBO") addressing whether the power to impose fines and penalties can be implied from the scheme of the legislation in light of the broad legal principles governing the interpretation of coercive penalty provisions.**
 - ii. With respect to the application of regulation 12 (4) of NIBO - does the St. Kitts and Nevis Interpretation Act affect the interpretation of regulation 12 (4) of NIBO and to what extent;**
 - iii. (a) Can the broad regulation making power under section 84 of NIBO be said to confer on the minister the power to**

prescribe administrative fines and penalties under the regulations;

(b) did the minister comply with the established rule making powers when he purported to make regulation 12.4;

iv. (a) with respect to costs and the application of section 30 (8) of NIBO whether the terminology “any liability” is sufficiently broad to include liability to pay legal costs in legal proceedings;

(b) Properly construed does section 30 (8) of NIBO oust the exercise of the discretionary jurisdiction of the Court to award costs.

2. These further submissions are to be supported by relevant authorities which must be annexed.

3. Judgment is reserved pending the receipt of the submissions.

Reason:

The Court was of the view that it would be beneficial to receive further submissions on the issues raised in the appeal and therefore ordered the parties to file written submissions addressing the same.

Case Name:

[1] Digital Security Services
[2] Michael Peets

v

**Hamilton Reserve Bank Limited
(formerly Nevis International Bank and Trust
Limited)**

**[NEVHCVAP2024/0016]
(Saint Christopher and Nevis)**

Date:

Thursday, 13th March 2025

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Respondents/ Appellants:	Ms. Angela Cozier
Applicant/ Respondent:	Ms. Aymah George

Issues: Application to strike out the appeal – Rule 26.3 (1)(a) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 - Failure to comply with a rule, practice direction, order or direction of the court – Rule 62.6(1)(b) of the Civil Procedure Rules 2023 - Non-compliance with order dated 24th September 2024 for the filing and serving of notice of appeal within 21 days of the date of the order – Late service of the notice of appeal – Whether the appellants have provided no good reason for the delay – Service of notice of appeal without the requisite attendant documents - Failure to file written submissions – Whether the appellants have failed to provide an explanation for the failure to file written submissions – Rule 62.5(6) of the Civil Procedure Rules (Revised Edition) 2023 – Whether the notice of appeal discloses no prima facie grounds for bringing the appeal – Whether the appellants have provided any compelling reasons why the matter should be disposed of at appeal – Rule 26.3(1)(c) of the Civil Procedure Rules (Revised Edition) 2023 – Striking out on the ground of abuse of process – Whether the appeal is an abuse of the process of the court and is likely to obstruct the just disposal of the proceedings

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:
1. The application to strike out the notice of appeal filed on 23rd January 2025 is granted.

2. The notice of appeal filed on 16th October 2024 is accordingly struck out and dismissed.
3. The respondents will pay the applicant's costs in the sum of \$2000.00 on or before 11th April 2025.

Reason:

Before the Court was an application to strike out a notice of appeal filed on 23rd January 2025. The appeal in question was filed on 16th October 2024 against the order of Thompson J dated 18th July 2024. The order granting leave to appeal mandated that service was to be effected within 21 days of the court's order i.e. by 16th October 2024.

Service was not effected within the time prescribed by the order. Service was in fact effected on the 25th October 2024, nine days outside of the time prescribed. The notice of application seeking to strike out the notice of appeal advanced the following grounds: (1) that service was not effected within the time prescribed by the order granting leave to appeal; (2) that the notice of appeal was served without the requisite attendant documents required by the Civil Procedure Rules including the order of the court below and the skeleton submissions were not filed in support of the notice of appeal in accordance with CPR Part 62.13(1). The applicant also contended that (3) the notice of appeal disclosed no reasonable grounds for advancing the appeal and finally that (4) the appeal was an abuse of process which would obstruct the just disposal of proceedings.

The Court considered the notice of application, the evidence filed in support, the notice of opposition filed in respect of the application, the legal submissions filed both in support of the application and in opposition thereto. The Court also considered the notice of appeal and the oral submissions advanced by counsel during the course of the hearing. The Court determined that the application should be granted and that the notice of appeal filed on 16th October 2024 be accordingly struck out and dismissed.

In arriving at this conclusion the Court determined that the submissions advanced by the applicant were

persuasive: that the service of the notice of appeal was executed outside the time prescribed and that the notice of appeal once served was not accompanied by the requisite documents required by Rule 62.13(1) and that there was no reasonable explanation advanced by the respondents for such failure. In that regard, the Court noted that an application for an extension of time was filed on the 11th March 2025 in the E-Litigation Portal, at least one full day before the hearing of the appeal. That application accordingly was not before the Court at the morning of this hearing and did not require its deliberation in the circumstances. Nevertheless, the Court had regard to the affidavit evidence filed in support of that application i.e. the affidavit of Davinia Bartlett filed on 11th March 2025. The Court found that the said affidavit did not satisfactorily address any of the factors that the Court must take into account when considering an application to extend time and in particular, paragraph 13 of the affidavit which purported to set out the reasons for the delay, did not afford a good explanation for the delay.

The Court was also satisfied that the notice of appeal filed on the 16th October 2024 did not disclose reasonable grounds. The Court considered the submissions of the applicant and agreed that paragraphs 1 to 14 of the application raised grounds that had been definitively determined in the court below and on appeal as they seek to challenge findings of liability under default judgment, a matter which was already resolved. Grounds 15 to 20 contended that the orders made in the face of an extant stay ordered in respect of the attachment of debts order were ‘blatantly wrong’. The Court agreed that these extant stay proceedings were discrete (to the attachment of debts order) and were not writ large such that the court below would be proscribed from proceeding with other forms of enforcement. No persuasive argument had been advanced in that regard and no authorities were submitted by counsel in support of the submission. Ground 21 contended that the contract between the parties was null and void and could not be enforced on the basis that it was entered into by a person who was not a director of the company. This raised an issue regarding the

enforceability of the contract which was not a live issue on the pending counterclaim or on the appeal. The Court was accordingly satisfied that the appeal should be struck out on the basis that it did not disclose any reasonable grounds.

The Court recognized that striking out an appeal is a draconian measure reserved only for the most obvious cases. Having listened to counsel in the proceedings and having considered all the documents, the Court was satisfied that the threshold had been met in this case and accordingly, the notice of appeal was struck out and the respondents ordered to pay the applicant's costs in the sum of \$2,000.00 on or before 11th April 2025.

Case Name:

Pinneys Hotel Development Limited

v

**St. Kitts Nevis and Anguilla National Bank
Limited**

**[SKBHCVAP2024/0008]
(Saint Christopher and Nevis)**

Date:

Friday, 14th March 2025

Coram:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**Mr. Dwight Cozier as Director for the Appellant holding
for Ms. Angela Cozier**

Respondent:

Ms. Chante Francis

Issues:

**Civil Appeal - Application for an adjournment due to
illness of appellant's counsel**

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The application for the adjournment is granted.
2. The appeal shall be set down on a date to be fixed by the Chief Registrar after consultation with the parties.

Reason: The Court received an application which was filed on 14th March 2025 supported by an affidavit of Dwight Cozier seeking an adjournment of the proceedings on account of an injury to counsel, Ms. Cozier, for the appellant. The application was supported by the medical certificate signed by a Dr. Ravi Shankar. The respondent opposed the application for an adjournment and sought costs of the day. Upon considering the application and hearing counsel, the Court was minded to grant the application for the adjournment and made no order as to costs.

Case Name: Derrick Hazel

v

The Chief of Police

[SKBMCRAP2020/0001]
(Saint Christopher and Nevis)

Date: Friday, 14th March 2025

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Petra N. Byer, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Leslie Roberts

Issues:	Magisterial Criminal Appeal against conviction - Convicted of annoyance in a public place contrary to section 11 of the Small Charges Act cap. 4.36 of the Laws of the Federation of Saint Kitts and Nevis - Whether the learned magistrate erred in ruling that the appellant was guilty - Whether there is any basis on which the conviction can stand in accordance with section 11 of the Small Charges Act cap. 4.36 of the Laws of the Federation of Saint Kitts and Nevis
Type of Order:	Oral decision
Result / Order:	IT IS HEREBY ORDERED THAT: The appeal against the conviction of the appellant is allowed.
Reason:	The Court noted that the application for leave to appeal filed on 13th January 2020, having been deemed the notice of appeal; the name of the respondent having been corrected; and the concession by counsel for the respondent that in fact the evidence does not substantiate the charges before the Court. For those reasons, the Court was of the opinion that the appeal against the conviction of the appellant should be allowed.