

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

GRENADA

Monday, 27th January 2025 – Friday, 31st January 2025

JUDGMENTS

Case Name:

Charlotte Brodie

v

Henry Brodie

[BVIHCVAP2024/0006]

(Territory of the Virgin Islands)

Date:

Wednesday 29th January 2025

**Coram for
Delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant

Ms. Marie-Lou Creque via Zoom

Respondent

Ms. Asha Johnson Willins via Zoom

Issues:

Civil appeal – Relocation application - Welfare of children – Best interests of the child – Appellate interference with cases affecting the best interests of the child - Relevance of parenting agreement in determining the best interests of a child – Appellate interference with trial judge’s findings of fact – Whether the learned judge erred in her findings of fact – Whether the learned judge erred in the weight given to her findings of fact - Whether the learned judge erred in the weight given to parenting agreement in determining relocation application – Whether the learned judge erred in the assessment of factors in determining the relocation application

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The decision of the learned judge is affirmed.**

Reason:

- 1. The father's application for ancillary relief and the totality of the evidence filed in support of and in opposition to the application, as well as the legal submissions advanced by the parties in the court below clearly indicate that the case before the learned judge did not simply concern relocation for the purposes of the children's education. The reference to schooling in the application related solely to the question of the timing when the order for permanent relocation should take effect since it is clearly best that the children be well settled and, in a position, to enrol in the new school/nursery at the beginning of the academic year. Accordingly, grounds A-C of the appellant's appeal which take issue with the learned judge's findings that the father's application was not made solely for the purpose of facilitating the education of the children as expressly stated in the application are dismissed.**
- 2. An appellate court should not interfere with the trial judge's factual findings unless satisfied that the judge was plainly wrong. This restraint against the interfering with findings of fact applies not only to findings of primary fact, but also to the judge's evaluation of those facts and the inferences drawn from them. The phrase 'plainly wrong' directs the court to consider whether it was permissible for the judge at first instance to make the findings of fact which he or she did in the in the face of the evidence as a whole. In this case, the father's evidence that he was required to work in the UK was supported by correspondence from his employer which was exhibited, and which evidence was not challenged by the mother in**

cross examination. The learned judge was entitled to accept the father's evidence. This is not a finding that an appellate court could say is plainly wrong. Accordingly, ground D of the appeal is dismissed.

Margaret Blackburn v James A.L. Bristol GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) applied; Volpi and another v Volpi [2022] EWCA Civ 464 applied.

3. The contents and the timing of the parenting agreement (executed following the breakdown of the marriage) are notable as they provide a useful snapshot of the parties' historic views as to the best interests of the children. This agreement would be relevant as it shows that as recently as August 2022, the parties anticipated a return to the UK which indicates that the parents thought that this was best for the children. It is clear that the learned judge was fully seised of the fact that regardless of the terms of the agreement, she is the ultimate arbiter of whether relocation is in the best interests of the children. The learned judge clearly applied the paramount consideration and the welfare checklist in arriving at her decision. Grounds E, F, I, J and L of the appeal are therefore dismissed.
4. While section 11 of the Guardianship of Infants Act empowers the court to make such orders as it thinks fit regarding the custody of an infant and the right of access of either parent, the court in exercising its discretion, shall regard the welfare of the child as the first and paramount consideration. The court also applies the welfare of the child test in cases concerning either external or internal relocation. However, the inquiry is highly contextual because of the multitude of factors which may impinge on the child's best interest. The application of that test involves balancing all the relevant factors, which may vary hugely from case to case, weighing one

against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child.

Sections 3 and 11 of the Guardianship of Infants Act Cap 270 of the Laws of the British Virgin Islands applied; Re TC and JC (Children: Relocation) [2013] 2 FLR 484 applied; DV (mother) v ZV (father) [2024] EWFC 283 (B) applied; Re C (A child) (Internal Relocation) [2015] EWCA Civ 1305 applied.

5. The learned judge's reasons do not suggest any lack of awareness of the relevant legal test or the principles to be applied in considering the relocation application. In determining what was in the best interest of the child, the learned judge very carefully canvassed, in detail, the relevant factors which the courts have dictated should be weighed in concluding why relocating to England with their father was not best for the children. The trial judge's analysis was free from material error, serious misapprehension of evidence, or error of law. Overall, the learned judge did make a global, holistic evaluation of the best interests of the children and did so by applying the welfare checklist.
6. A trial judge is obliged to consider all the material evidence (although it need not all be discussed in his judgment). However, the weight which he or she gives to it is pre-eminently a matter for him or her. In this case, the judge had taken into account and given appropriate weight to each of the factors to which the mother had drawn attention. There was no maintainable basis for any complaint that the judge had either taken into account irrelevant factors or failed to take into account relevant factors nor was there any sustainable basis for a complaint that the judge had erred either in the weight she had chosen to

attach to the various factors she had taken into account or her evaluative decision as to where the ultimate balance had fallen.

Ming Siu Hung and others v J F Ming Inc and another [2021] UKPC 1 applied.

7. The impact of a refusal upon a parent seeking relocation may be an important factor in a case, but it is one factor of many which the court must consider in the balancing exercise to determine where the child's welfare lies. Ultimately, after balancing the parents' wishes and interests (along with all of the other relevant factors), the learned judge determined that relocation to England was in the best interest of the children. She did so having considered the historical parenting roles of the parties and the competing care plans and accorded significant weight to the children's need to maintain meaningful contact with both parents in a country where they are entitled to reside as of right. The learned judge further determined that relocation would not unduly disadvantage the children's education, medical care or exposure to extracurricular activities because the institutions and facilities in England are comparable. The trial judge was clearly of the view that relocation would both directly and indirectly benefit the children and it cannot be said that the learned judge has exceeded the generous ambit of her discretion, and or that her decision was wrong. Accordingly, the appeal is dismissed.

Re: V (Appeal: Relocation) [2024] EWHC 2600 (Fam) applied.

Case Name:

Geminis Investors Limited
v
Goods Technology Starting International
Limited

**[BVIHCMAP2022/0020]
(Territory of the Virgin Islands)**

Consolidated with:

**Geminis Investors Limited
v
[1] Goods Technology Starting International
Limited
[2] G-Force Int'l Co Ltd**

**[BVIHCMAP2022/0043]
(Territory of the Virgin Islands)**

Date:	Thursday 30th January 2025
Coram for Delivery:	The Hon. Mde. Margaret Price-Findlay, Justice of Appeal The Hon. Mr. Eddy D. Ventose, Justice of Appeal The Hon. Mde. Gerard St. C Farara, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Colleen Farrington and Ms. Alana-J Joseph and Ms. McKay Drigo via Zoom
Respondent:	Ms. Sarah Jane Knock via Zoom
Issues:	Commercial Appeal – Asset Settlement – Statutory Demand – Whether the appellant was entitled to invoke the asset settlement provision contained in the Notes to claim that the debt had been extinguished - Whether there exists a substantial dispute regarding the existence of the debt or a part of the debt sufficient to reduce the undisputed debt to less than the prescribed minimum as owing or due
Result / Order:	IT IS HEREBY ORDERED THAT: 1. The appeals are dismissed.

2. Costs to the respondent to be assessed by a judge of the commercial court if not agreed within 21 days of the date of this judgment.

Reason:

1. The evidence in support of the application to set aside never addressed the contention of the respondents that the asset settlement provisions had not been invoked. The appellant, having failed to complete the transactions regarding the assets (whether the same had been triggered or not) belies the contention that the court should have considered that a substantial dispute had been raised. Perhaps, if the transaction had been completed, that is, that there was in fact a transfer of the assets, registration in their name, and allocation to the Anuenue account of the USD\$4.5 million dollars that the appellant had indicated was to be done, that would have presented as a different factual matrix of whether the debt still in fact existed and whether it was open to the respondents to say otherwise. But this was not the case. A simple assertion by a party without the necessary actions could not enable the appellant to rely on the provision to create a non-existent dispute.

Western Bulk Carriers k/s v Li Hai Maritime Inc. 2005 2 Lloyd's Rep 389 applied; Vitol SA v Genser Energy Ghana Ltd [2022] EWHC 1812 applied.

2. It is clear that the judge below could come to no other determination that there was no need to take further evidence on the issue of the additional payment having been made but not taken into consideration by the respondents in their calculations on the Demand, when the appellants had clearly been put on notice. Indeed, there was no submission made to the court below that the appellants were seeking an opportunity to do so but rather they told the court that "they suspect they may have to put in evidence at some point that there was an additional payment of \$744,000.00 made to the respondent". There having been no evidence before the court below, I agree that even if the court had accepted that the

purported asset settlement was operative, such settlement still left a balance well over the statutory maximum. A position which the court below found. It is therefore clear, taking the arguments of the appellant at its most generous, that the appeal against the finding of the learned judge below cannot be sustained. The findings of the judge were entirely within his remit to find based on the evidence and the arguments before him, and as such the Demand appeal is dismissed.

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed in part.
2. The orders made at sub-paragraphs 1-3 of paragraph 40 of the judgment of the learned master is set aside and substituted with the following:
 1. In respect of the first issue, the application for summary judgment in respect of the (1) Current Account is allowed; and (2) Deposit Account is dismissed.
 2. The application for summary judgment on the Second and Third issues is dismissed.
 3. The respondent is entitled to 75% of its costs (and the appellant 25% of its costs) in the appeal to be assessed if not agreed within 21 days of the date of this judgment.
 4. The matter shall proceed in accordance with Civil Procedure Rules (Revised Edition) 2023.

Reasons:

1. In relation to payments to be made on demand, there must be an express demand for repayment as a condition precedent to the right to sue the banker for the amount standing to the credit of the customer's current account. In many cases in which the question is likely to arise, even if a demand is necessary to complete the cause of action, a writ is a sufficient demand. This principle, though applicable to the appellant's

current account, is plainly not applicable to its time deposit account. Therefore, the appellant could have only succeeded in obtaining a declaration that the initiation of the proceedings in the court below was a sufficient and valid demand for the return of its money held by the respondent in its current account. The sums in the time deposit account would only be available to the appellant upon the date of maturity provided that the appellant cancelled the automatic renewal of the deposit account in accordance with the respondent's terms and conditions governing certificates of deposits to which the appellant had agreed. Though the master averred to an aspect of this issue in paragraph 22 of his judgment, he did not properly address and conclude as to whether summary judgment ought to be granted in favour of the appellant on this issue.

Joachimson v Swiss Bank Corporation [1921] 3 KB 110 applied.

2. The initiation of the proceedings in the court below meant that the appellant had issued a sufficient and valid demand for the return of its money held by the respondent in the current account. This was sufficient notice of the termination of the banker and customer relationship pursuant to clause 30 of the Agreement and thereupon there must be settlement of the position between the parties. In the proceedings relating to its summary judgment application, the appellant cannot rely on any other notice other than the valid demand made for the return of its money that was made when it filed its re-amended claim form and statement of claim on 23rd January 2023. However, the pleadings and evidence show that there had been no settlement as required upon the engagement of clause 30 of the Agreement.
3. Clause 19 of the Agreement did not excuse the respondent from performing any of its obligations under the Agreement. Clause 19 served to exempt the respondent from any liability for any loss suffered by a customer, including the appellant, if

any of the circumstances outlined in clause 19 occurred. It also provided that if any of those circumstances occur, the respondent would take those measures that could be reasonably required of it in order to limit the adverse consequences for the customer resulting from that occurrence. The Court found that clause 19 is not a force majeure clause as suggested by the respondent, and the Court disagreed with the master's statement that clause 19 was sufficiently wide so as not to exclude the imposition of an international sanction as constituting force majeure. However, in relation to the issue of frustration, the Court agreed with the master that if the respondent's position is that its inability to perform its contractual obligation is temporary, meaning that while the sanctions are in place it cannot return the monies to the appellant and that it can only do so when circumstances permit, the respondent would not be able to rely on the doctrine of frustration which, if successful, would bring the contract to an end or discharge the contract.

Chitty on Contracts 27th Ed. Ch 14 at 14-121 applied; JP SPC 4 and another v Royal Bank of Scotland International Ltd [2023] AC 461 considered.

4. However, as it relates to the time deposit account, the sums would only be available to the appellant upon the date of maturity provided that the appellant cancelled the automatic renewal of the time deposit account in accordance with the respondent's Terms and Conditions governing Certificates of Deposits. The question of whether there was any automatic renewal of the Deposit Account is not a matter that can be determined on a summary judgment application; it is a matter that must be determined at trial.
5. The question whether there exists a relationship between the return of the funds to the appellant and the requests for information on the two bank accounts and when this information was requested are all matters that cannot be resolved

in this summary judgment application. These are matters that can only be determined at trial.

6. It follows logically that since the appellant is not to be granted the declaration that it is entitled to the return of its funds held on account as soon as possible, the appellant is likewise not entitled to an order that the funds held in the current account and the time deposit account should be paid to the appellant by the respondent.

APPLICATIONS AND APPEALS

Case Name:

**Vidatel Limited
v
PT Ventures, SGPS, S.A**

**[BVIHCMAP2024/0013]
(Territory of the Virgin Islands)**

Date:

Monday 27th January 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara , Justice of Appeal
[Ag.]**

Appearances:

Applicant:

Mr. Hermann Boeddinghaus KC with him Ms. Colleen Farrington

Respondent:

Ms. Georgina Peters and Mr. Scott Tollis

Issues:

**Application to revoke order of a single judge - Whether the order for the appellant to pay the respondent's security for costs was just in all the circumstances -
Application for an adjournment**

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applicant's application for an adjournment is refused.**
- 2. Judgment is reserved on the application to vary order of single judge.**

Reason:

Before the Court was an application to revoke an order granted by a single judge filed on 9th October 2025. Prior to hearing the substantive application, counsel for the applicant indicated that he was not in a position to advance the application and made an application to adjourn the matter to the next sitting of the Court of Appeal in the Territory on the Virgin Islands. The application was opposed by the respondent. Having heard the application for the adjournment and the reply from the respondent the Court was not satisfied that the reasons given for requesting the adjournment were valid and therefore the Court was not minded to grant the application for the adjournment. Counsel for the applicant subsequently indicated that he was not in a position to provide oral submissions on behalf of the applicant and proceeded to withdraw from the hearing. After hearing oral submissions from the respondent, the Court reserved its decision on the matter.

Case Name:

Isaac Joseph

v

Matthew Blair

[GDAHCVAP2019/0009]

(Grenada)

Date:

Monday 27th January 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Applicant: In person

Respondent: No appearance

Issues:

Application for an amendment of notice of appeal -
Application for adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The matter is adjourned to the next sitting of the Court in Grenada scheduled for the week of 7th July 2025.
2. The Chief Registrar is to inform whether the matter can be accommodated at an earlier sitting.

Reason:

The appellant/applicant requested an adjournment of the hearing of the appeal. The Court was of the view that in the circumstances of the case, the application for an adjournment ought to be granted. The matter was therefore adjourned to the next sitting of the Court of Appeal in Grenada.

Case Name:

**Leslie Phillip
v
Kyron Williams**

**[GDAHCVAP2023/0010]
(Grenada)**

Date:

Monday 27th January 2025

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Ruggles Ferguson KC with him Ms. Mckeda Augustin

Respondent: Ms. Caryn Adams

Issues:

Interlocutory Appeal - Expert evidence - Refusal of application for leave to call expert witness - Exercise of discretion by master - Whether the master failed to appreciate the importance of the expert evidence to the disposition of the matter - Rule 32.2 of the Civil Procedure Rules 2023 - Whether expert evidence was reasonably required to resolve the proceedings justly - Whether master erred in finding that the expertise of the witness would not assist the court with the matters in issue and the just disposal of the case

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

Kathleen Raye

v

Capital Bank International Limited

[GDAHCVAP2017/0017]

(Grenada)

Date:

Tuesday 28th January 2025

Coram:

The Hon. Mr. Mario Michel, Chief Justice [Ag.]

The Hon. Mr. Trevor M. Ward, Justice of Appeal

The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Applicant/Respondent: Mr. Ruggles Ferguson KC with him Ms. Mckeda Augustin

Respondent/Appellant: Mr. Trevon St. Bernard

Issues: Application to strike out the appeal for want of prosecution - Discontinuance

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Notice of Discontinuance having been filed by the appellant, the appeal stands dismissed.
2. Costs to be assessed if not agreed by the parties within 21 days of the date of this order.

Reason: Upon the appeal being discontinued by Notice of Discontinuance filed on 27th January 2025, the Court was minded to dismiss the appeal and order that costs be assessed if not agreed by the parties within 21 days of the date of the order.

Case Name: [1] Ramesh Armanani
[2] Mohan Armanani
(by his lawful son and interested party Mahesh Amarnani)

v

AEA Company Limited

[GDAHCVAP2023/0019]
(Grenada)

Date: Tuesday 28th January 2025

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

The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:

Applicants: Ms. Gennilyn Ettienne

Respondent: Mr. Ruggles Ferguson KC with him Ms. Mckeda Augustin

Ms. Hazel Hopkin appearing for the defendant Kennie John not named as a respondent in the appeal

Ms. Amy Bullock-Jawahir holding a watching brief for the defendants to the ancillary claim

Issues:

Application for an extension of time for leave to appeal -
Application for leave to appeal - Adjournment

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The applications for extension of time and for leave to appeal are adjourned to the sitting of the Court of Appeal for the territory of Antigua and Barbuda scheduled for during the week commencing 24th February 2025.

Case Name:

[1] Ricky Morain

[2] Robbie Morain

v

Beverley Whint

**Republic Bank Grenada Limited
(Interested Party)**

**[GDAHCVAP2022/0001]
(Grenada)**

Date:

Tuesday 28th January 2025

Coram:

The Hon. Mr. Mario Michel, Chief Justice [Ag.]

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal**

Appearances:

Appellants: Mr. Deloni Edwards with Ms. Britney Scott

Respondent: Mr. Kristopher-Ross Fields

Ms. Amy Bullock-Jawahir appearing for the interested party Republic Bank Grenada Limited

Issues:

Civil appeal - Discontinuance

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Notice of Discontinuance having been filed by the appellant, the appeal stands dismissed.**
- 2. Costs to be assessed if not agreed by the parties within 21 days of the date of this order.**

Reason:

Upon the Court noting a Notice of Discontinuance filed on 28th January 2025 and further noting that the parties had not come to an agreement on the issue of costs, the Court dismissed the appeal and ordered that costs were to be assessed if not agreed by the parties within 21 days of the date of this order.

Case Name:

Keith Claudius Mitchell

v

Patrick Simmons

**[GDAHCVAP2023/0023]
(Grenada)**

Date:

Wednesday 29th January 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal**

The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant: Mr. Ramesh Maharaj SC with him Ms. Amy Bullock
Jawahir via Zoom

Respondent: Mr. Alban John with Ms. Hazel Hopkin-La Touche and
Ms. Chandelle Dezlin-Bartholomew via Zoom

Issues:

Application for appellant to appear via Zoom - Civil Appeal - Defamation - Defence of fair comment - Defence of qualified privilege - Appeal against decision by the learned judge finding that certain words said by the appellant were defamatory of the respondent - Assessment of evidence - Whether the learned judge erred in law and misdirected himself by failing to take into account the political context and the mode in which the words were published and took into account irrelevant matters including the intention and knowledge of the appellant - Whether the learned judge erred in law in holding that the defence of fair comment failed - Whether the learned judge erred in holding that even if the defences of fair comment and/or qualified privilege had been made out they would have been defeated by malice - - Whether the learned judge misdirected himself in holding that the Reynolds principles were applicable in this case - General damages - Whether the award of general damages was inordinate in the circumstances of the case - Whether the learned judge erred in awarding aggravated damages

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

China National Gold Group Hong Kong Limited

v

**[1] Global Mining Development LP
[2] Gerald Metals LLC**

**[BVIHCMAP2024/0027]
(Territory of the Virgin Islands)**

Date: Thursday 30th January 2025

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Gerard St. C Farara, Justice of Appeal
[Ag.]

Appearances:

Applicant: Mr. Stuart Adair with Ms. Rosalind Nicholson via Zoom

Respondents: Mr. Ali Malek KC with Ms. Amy Gregg, Mr. Jonathan Adoo, Ms. Natasha Guthrie and Mr. Mark Wells via Zoom

Issues: Application for leave to appeal - Whether appeal has a real prospect of success - Rule 62.2(8) of the Civil Procedure Rules, 2023 - Application for a stay pending appeal - Whether Court has jurisdiction to grant the stay - Section 18 of the Eastern Caribbean Supreme Court (Virgin Islands) Act - Whether appeal would be rendered nugatory if stay is not granted - Degree of risk of injustice to the parties

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. Leave to appeal is granted to the applicant to appeal the decision of the learned trial judge not to recuse himself in the matters.
2. The applicant is to file the notice of appeal within 7 days of today's date.
3. The matter thereafter will proceed in accordance with the Court of Appeal Rules and the Civil Procedure Rules, 2023.
4. All matters including the rectification and receivership application, the contempt application

and the discharge application are to be placed before another judge of the Commercial Court in the Territory of the Virgin Islands.

5. A stay is granted with respect to Wallbank J in respect of all matters including pending applications in the matter, pending the outcome of the appeal.
6. Costs in these applications are costs in the appeal.

Reason:

The Court, having read the submissions of counsel on the application for leave to appeal, was satisfied that the applicants had met the threshold for the grant of leave to appeal. With respect to the application for a stay pending appeal, the Court having read the written submissions of the parties and heard the oral submissions of counsel for both parties, was satisfied that it was in the interest of justice that a stay is granted pending the determination of the appeal.

Case Name:

Adolphus John Stiney

v

[1] Benedict Noel

[2] Martha Noel

[3] Bernadine Steele

[4] Rachel Steele

[5] Dunbar Christopher Steele

[6] Javier Ricky Steele

[GDAHCVAP2022/0018]

(Grenada)

Date:

Thursday 30th January 2025

Coram:

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Gerard St. C Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Winnifred Duncan Phillip with Ms. Thira Dumont

Respondents: Dr. Francis Alexis with Ms. Olabisi Clouden for the 1st and 2nd Respondents

Mr. Anselm Clouden with Mr. Dwight Horsford for the 4th to 6th Respondents

Issues: Civil appeal - Trespass - Appeal against the order of the learned trial judge in granting possession to the respondents - Adverse Possession - Whether the respondents satisfied a claim in adverse possession - Whether the respondents were tenants of the appellant - Whether the learned judge properly considered the rent receipts, letters, and other documentary evidence presented to demonstrate that the respondents' parents and/or grandparents were tenants of the appellant as recent up to April 2011 - Whether the learned judge placed undue weight on the receipt issued Alexander Steele on 16th April, 2010, given that Alexander Steele died in September, 2009 - Whether the learned judge improperly considered and placed undue weight on that fact that the appellant produced no receipts for the years 1997 to 2000 – whether the findings of the learned trial judge were against the weight of the evidence – In what circumstances can an appellate court over turn findings of fact made by a judge at first instance

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason: N/A

Case Name: Candida Patrice
v
Grenada Development Bank

[GDAHCVAP2021/0030]

(Grenada)

Date: Friday 31st January 2025

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Kristopher-Ross Fields
Respondent: Ms. Amy Bullock-Jawahir

Issues: Civil Appeal - Striking out of claim - Case management powers of trial judge - Overriding objective to deal with cases expeditiously - Whether the learned judge erred in the exercise of her discretion to strike out the appellant's claim following a breach of a court order - Adjournment of trial requested on the basis of bereavement - Failure to file skeleton arguments and trial bundle prior to trial - Failure to file an application for an extension of time or seek relief from sanctions - No express sanction in the rules for failure to file skeleton arguments

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:
1. The appeal is allowed and the order dated 12th October 2021 striking out the Claim set aside.
2. The claim in the court below is restored to be dealt with in the High Court before another judge.
3. No order as to costs.

Reason: Before the Court was an appeal filed by the appellant Candida Patrice against the judgment and order of the learned judge of the High Court dated 12th October 2021 by which the learned judge struck out the appellant's claim in the court below. In the notice of appeal filed on 22nd December 2021, the appellant relies on some 13

grounds of appeal. The Court had the benefit of the written submissions filed on behalf of the appellant on 23rd December 2021 in support of the appeal. No written submissions had been filed on behalf of the respondent and learned counsel for the respondent confirmed to the Court that they do not oppose the appeal.

In making oral submissions to the Court, learned counsel for the appellant focused particular attention on paragraph 5 of the written judgment of the learned judge below. In particular, the last sentence of paragraph 5 which reads as follows: “the Claimant and the parties failed to seek relief from sanctions. That, in my view, is fatal to the Claimant’s claim.” It was the submission of the appellant that the learned judge erred as a matter of principle in stating that an application for relief from sanctions was necessary and that the absence of an application for relief from sanctions was fatal to the Claimant’s claim.

The Court was satisfied, having heard counsel for the appellant, that the learned judge erred as a matter of principle which entitled the Court to reconsider the matter and to set aside the order made by the learned judge in the Court below. In the circumstances, the Court was satisfied that the learned judge ought not to have struck out the claim in the proceedings below.

Case Name:

**Heron’s Flight Inc.
(Trading as “Spice Isle Coffee”)**

v

The Airports Authority

**[GDAHCVAP2024/0006]
(Grenada)**

Date:

Friday 31st January 2025

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Melissa Modeste-Singh with Mr. Dylan Charles

Respondent: Ms. Shireen Wilkinson with Mr. Zurial Francique

Issues: Civil Appeal - Breach of contract - Misrepresentation - Breach of warranty - Whether the pleadings were uncontroverted - Whether the main issue for the court's determination was one of interpretation of the definition of "food and beverages" - Whether the learned judge erred in not applying the ordinary meaning of the words "food" and "beverage" - Whether the learned judge erred by failing to disregard the hearsay evidence from the respondent contained in the witness statement of Lenworth Gordon at paragraph 4 - Whether the learned judge erred by failing to appreciate that all references dealing with Goddard's Catering Grenada are Res Inter Alios Acta and irrelevant and therefore inadmissible - Whether the learned judge erred in law in deciding that the Memorandums of Understanding solely formed the basis of a contract without taking into account the alleged misrepresentation - Whether the reasons given by the learned trial judge for believing the witness for the respondent and disbelieving the witness for the appellant were unjustifiable, unsatisfactory and untenable

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason: N/A