

THE EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

ANGUILLA
VIDEOCONFERENCE
25th - 28th November 2024

APPLICATIONS AND APPEALS

Case Name:

Erimel Franklin

v

Anguilla Electricity Company Limited

[AXAHCVAP2023/0001]
(Anguilla)

Date:

Monday, 25th November 2024

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellant:

Ms. Tara Carter with her Mr. Devin Hodge

Respondent:

Ms. Tona Simpson Whyte

Issues:

Civil Appeal - Company Law – Whether the counteroffer letter was valid under the company bylaws and under section 84 of the Companies Act

Law of Agency - Internal Management - Ostensible or Apparent Authority - Whether the CEO of the respondent had the authority issue the counter offer citing terms of settlement – Whether the appellant was put on inquiry as to the validity of the approval of the counteroffer by the Board of the respondent - Whether from the evidence led at the trial, it was open to the

learned trial judge to find that there was no valid agreement existing between the parties – Whether an appellate court can intervene with factual findings made by the trial judge

Contract - Breach of contract - Whether the counter-offer set out in the letter dated 25th April 2021 on the Respondent's letterhead and signed by its CEO was void on the bases that it was not authorised by the Board and the Appellant was put on inquiry as to the validity of the Board's approval of the said settlement offer - Whether the elements or essentials required for the formation of a binding and enforceable contract existed in circumstances where in relation to the Appellant outlined in the referenced counter-offer and her acceptance did not expressly indicate that her consideration would be effected by discontinuance of her claim before the Labour Tribunal

Specific Performance - Whether the Appellant is entitled to specific performance against the Respondent to enforce the promise to pay as detailed in the counter-offer letter dated 25th April 2021 - Costs

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

Lavan Hoyoung

and

Pamela Riley

v

**National Bank of Anguilla Limited (in
receivership)**

**[AXAHCVAP2021/0007]
(Anguilla)**

Date: Tuesday, 26th November 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Applicant: Ms. Lavan Hoyoung

Respondent: Ms. Jacinth Jeffers

Issues: Application to be removed from the record

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application filed by Lavan Hoyoung of LAWFIN Global Advisory Services on 18th November 2024 that she be removed from the record as legal practitioner for the appellant is hereby granted.
2. The time for service of the application on the appellant is abridged
3. Service of this order to be effected on the appellant within 7 days of the date of this order in accordance with rule 63.6 of the Civil Procedure Rules Revised Edition (2023).
4. No order as to costs.

Reason Before the Court was an application by the applicant to be removed as legal practitioner for the appellant in these proceedings. The appellant, who was present, indicated that she was served with the affidavit in support of the application on the day of its hearing. However, no objection was made to the application or

the abridgement of the time for service of the application. The application was accordingly granted.

Case Name:

Pamela Riley

v

**National Bank of Anguilla Limited (in
receivership)**

**[AXAHCVAP2021/0007]
(Anguilla)**

Date:

Tuesday, 26th November 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of
Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellant: In Person

Respondent: Ms. Jacinth Jeffers

Issues:

Adjournment

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

**The substantive matter is adjourned to the next sitting
of the Court in Anguilla scheduled for the week
commencing 5th May 2025 unless the matter can be
listed for a hearing at an earlier sitting in 2025.**

Reason

Before the Court was an appeal filed on 18th February 2022. Prior to hearing the appeal, the Court heard an application from counsel for the appellant filed on 18th November 2024 to be removed from the record. Noting that the appellant was served with the application to be removed from the record on the day of the hearing the Court granted the application there being no objection from the Appellant. The Court also noted that the appellant indicated that she was in the process of retaining new counsel to represent her in the appeal.

The Court was of the view that the intended counsel for the appellant should be given an opportunity to become acquainted with the matter and therefore granted an adjournment to the next sitting in Anguilla scheduled for the week commencing 5th May 2025 unless the matter could be listed for an earlier hearing.

Case Name:

Joseph Brice

v

The Attorney General of Anguilla

[AXAHCVAP2022/0002]
(Anguilla)

Date: Tuesday, 26th November 2024

Coram:

The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellant: In Person

Respondent: Mr. Anthony Bullock with him Mr. Theon Tross

Issues:

Civil Appeal – Appeal against the decision of the learned trial judge – Unlawful Arrest contrary to section 365 of the Criminal Code, Revised Statutes of Anguilla, Chapter C140 – Whether the appellant’s arrest and subsequent detention were unlawful –

Whether section 24 of the Police and Criminal Evidence Act 1984, UK was incorporated into the laws of Anguilla for the purpose of determining what amounts to an unlawful arrest – Section 3 of the Anguilla Constitution Order 1982 – Whether the arrest and detention of the appellant amounted to a breach of constitutional rights – Whether there existed any special features of the appellant’s case warranting entitlement to constitutional relief – Whether any of the reliefs sought by the appellant may be granted under an action in private law - Jurisdiction – Whether the constitutional motion was an abuse of process in view of existing appropriate parallel avenues for relief in private law action at the appellant’s instance, or during the criminal proceedings from which this motion emanates.

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**Alison Yvonne Rey (as representative of the
Estate of Hugo E. Rey, deceased)**

v

Paul Rey

**[AXAHCVAP2023/0008]
(Anguilla)**

Date:

Wednesday, 27th November 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of
Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellant: Ms. Tara Carter

Respondent: Ms. Jacinth Jeffers

Issues: Application to amend name of appellant

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:
Pursuant to the order of Justice Ermin Moise dated 13th July 2022 the name of the appellant is hereby amended to read 'Alison Yvonne Rey (as representative of the Estate of Hugo E. Rey, deceased)'.

Reason By order dated 13th July 2022 the High Court deemed Alison Yvonne Rey as a fit and proper person pursuant to CPR Part 21 to be representative of the defendant Hugo Rey (deceased) and ordered that the heading of the action be amended to reflect Alison Yvonne Rey (as representative of the Estate of Hugo E. Rey) Defendant.

The Court heard the oral application by counsel for the appellant who noted that relevant amendment was not reflected in the notice of appeal and requested that the name of the appellant be amended to reflect 'Alison Yvonne Rey (as representative of the Estate of Hugo E. Rey, deceased)' Appellant/Defendant.

Counsel for the respondent did not object to the application. The Court accordingly granted the application.

Case Name: Alison Yvonne Rey (as representative of the Estate of Hugo E. Rey, deceased)

v

Paul Rey

**[AXAHCVAP2023/0008]
(Anguilla)**

Date: Wednesday, 27th November 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal

Appearances:

Appellant: Ms. Tara Carter

Respondent: Ms. Jacinth Jeffers

Issues: Civil Appeal - Appeal against the decision of the learned trial judge - Breach of contract - Loan agreement with the National Bank of Anguilla - Payment of monthly installments towards the loan - Whether the learned trial judge misdirected himself with respect to the findings of fact or drew any erroneous inferences from those findings of fact - Whether there was an intention to create legal relations between the parties for the repayment of the loan - Whether there was any consideration between the parties - Whether there was privity of contract - Whether an award of damages should be made

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The decision of the learned trial judge is affirmed.
3. Costs in the appeal to the respondent to be assessed by a judge of the High Court if not agreed within 21 days of the date of this order.

Reason

The notice of appeal was filed by the appellant on the 27th and the 25th of July 2023 challenging certain findings of fact and findings of law. The findings of fact challenged that the learned trial judge erred in finding that Hugo Rey went to the Bank to negotiate the loan with the respondent, that he erred in finding that the respondent induced the appellant into an agreement on the premise that the appellant would pay the monthly loan payments. And with respect to the findings of law, that he failed to consider that there could be no legally binding agreement since there was no consideration; that the learned trial judge erred in finding that there was an intention to create legal relations between the parties; that the learned trial judge erred in finding that there was a benefit to Hugo Rey ensuring that the loan was paid and that this benefit satisfied the test of finding consideration; and that the learned judge erred in permitting a later application to be filed with respect to the assessment of damages. The grounds of appeal were that the learned trial judge should not have found that there was any intention to create legal relations, that there was no consideration with respect to the agreement.

The Court noted that, having heard both the appellant and respondent in their submissions, it is well aware of the principles with respect to the findings of fact with respect to the Court of Appeal. The Court found that it is trite law that an appellate court will not interfere with a trial court's decision where that trial court has seen and heard the witnesses give evidence except in rare circumstances. In such circumstances, the learned trial judge must have misdirected himself and drawn erroneous inferences from the facts of the case. The Court could not find, having looked at the decision of the learned trial judge, that in this case he misdirected himself with respect to any findings of fact or that he has drawn any erroneous inferences from those findings of fact. It is clear that when a learned trial judge who has the benefit of seeing and hearing the witnesses give evidence and in this case having seen the witnesses being cross-examined was in a position to assess that evidence and make the findings of fact which he did. The Court found that it could not be said that the learned trial judge was wrong in making the findings of fact which he did.

With respect to the findings of law which had been challenged, the learned trial judge found that there was a verbal contract between the appellant and the

respondent and there was an intention to create legal relations. The test for that purpose is found in Gregory Gordon v Jacqueline Hanover Civil Appeal No. 30 of 2015 (Antigua and Barbuda). The test is stated as follows:

“Whether there is a binding contract between the parties and if so upon what terms depends on what they have agreed. It depends not on their subjective state of mind but upon a consideration of what was communicated between them by words and conduct and whether that leads subjectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires is essential for the formation of the legal relations. Evidence of subjective intention of any party at the date of the agreement is not admissible.”

The Court was of the view that the learned trial judge applied that formulation and applied it correctly to the evidence and found rightly so that the parties here did intend to create legal relations and did so. He therefore was correct when he found, and if this Court can find no fault with the finding, that there was a legal and binding contract between the respondent and the appellant even though they were family members.

With respect to the issue of damages and the assessment of damages, the court found that the order made by the trial judge in the last paragraph of the judgment where he stated that he was, having found in favour of the claimant, an assessment of damages is to be undertaken by the court upon application by the claimant, that that order was in the form of a case management order there having been evidence before the court both on the claim and in the witness statement of the respondent with respect to the loss and damage that was suffered by the respondent. The court found that the assessment should be deferred as it gives the appellant an opportunity to cross-examine on that issue when it arises. The Court could find no fault with the learned trial judge’s reasoning in giving that case management order.

As a result, the court found that the appeal should be dismissed and the decision of the learned trial judge be affirmed.

Case Name: **In The Matter of the Possessory Titles Act No. 22 of 2016**

and

**In the Matter of an Application for a
Declaration of Possessory Title to Land
[1] Marsha Berrotte
[2] Irva Roberts**

**[GDAHCVAP2024/0016]
(Grenada)**

Date: **Wednesday, 27th November 2024**

Coram: **The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellants: **Mr. Ruggles Ferguson KC with him Ms. Winnifred Duncan-Phillip for the first appellant**

Mr. Ruggles Ferguson KC with him Ms. Amy Bullock Jawahir for the second appellant

Respondent: **N/A**

Issues: **Civil appeal- Possessory Titles Act of No. 12 of 2016 of the Laws of Grenada - Root of title - Adverse Possession - Whether the learned judge erred in construing and interpreting the Possessory Titles Act - Whether the learned judge erred in her interpretation and application of Section 5 of the Deeds and Land Registry Act Cap. 79 to support her finding that registered paper title holders are deemed to be lawful owners - Whether the learned judge was wrong in law in stating that the registered holder of a deed to the subject land is the lawful owner of the same - Whether the learned judge erred in law by stating that the provisions of the Limitation of Actions Act offered sufficient title to the applicants with defective registered titles - Whether the learned judge erred in**

the application of Arnold Celestine (Administrator of the Estate of O'Ferril Celestine) v Carlton Baptiste GDAHCV 2008/0174 (delivered 11th January 2011, unreported)

Type of Order: Adjournment

Result / Order: IT IS HEREBY ORDERED THAT:

The matter is adjourned to 28th November 2024 to facilitate the attendance of the Attorney General and President of the Bar Association to consider and accept the amicus curiae brief and to settle directions for the future conduct of the appeal.

Reason Before the Court was an appeal filed on 10th April 2024 challenging the decision of the learned judge in the court below refusing and dismissing the appellant's application for Declarations of Possessory Title. After hearing the submissions of counsel on behalf of the appellants the Court was of the view that the Attorney General of Grenada and the President of the Bar association of Grenada should be invited to accept an amicus curiae brief in order to provide independent legal submissions on the several issues arising in this appeal.

In arriving at this determination (which had the support of Counsel for the appellants) the Court took into account that this appeal will require the court to construe the purpose and intent of the Possessory Titles Act, that under the Possessory Titles Act, this Court is the final appellate court, and the fact the judgment in this appeal will provide guidance in respect of a number of pending actions in Grenada. The Court therefore adjourned the matter to 28th November 2024 to facilitate the attendance of the Honourable Attorney General and the President of the Bar Association to consider and accept the amicus curiae brief and to settle directions for the future conduct of the appeal.

Case Name: **In The Matter of the Possessory Titles Act No. 22 of 2016**

and

**In the Matter of an Application for a
Declaration of Possessory Title to Land
[1] Marsha Berrotte
[2] Irva Roberts**

**[GDAHCVAP2024/0016]
(Grenada)**

Date: **Thursday, 28th November 2024**

Coram: **The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellants: **Mr. Ruggles Ferguson KC with him Ms. Amy Bullock
Jawahir for the first appellant**

**Mr. Ruggles Ferguson, KC with him Ms. Winnifred
Duncan-Phillip for the second appellant**

**Ms. Chevaughn Spencer Joseph, Solicitor General for
the Attorney General appearing amicus curiae**

**Mr. Francis Paul, President of the Bar Association of
Grenada, appearing amicus curiae**

Respondent: **N/A**

Issues: **Possessory Titles Act of No. 12 of 2016 of the Laws of
Grenada - Purpose and Construction of the legislation
- Presence of the Attorney General and President of the
Bar Association as amicus curiae to assist the Court
in ascertaining the application of the legislation**

Type of Order: **Directions**

Result / Order: **[Oral Delivery]**

IT IS HEREBY ORDERED THAT:

- 1. The Attorney General and the Bar Association shall provide written submissions to the Court on or before 20th December 2024 on the following questions:**
 - I. What is the purpose and construction of the Possessory Titles Act?**
 - (a) Did the drafters intend (such intent be gleaned from the Hansard, for example) to accord any wider purpose to the legislation than that which is set out in the short title therein;**
 - II. What is the effect of the Possessory Titles Act with respect to persons applying for Certificates of Possession under the Act who have in their possession defective paper titles?**
 - III. Whether there is an intent to depart from the historical concept of adverse possession as stated in the cases of J A Pye (Oxford) Ltd and Others v Graham and Another [2002] 2 UKHL 30 and Powell v McFarlane (1979) 38 P & CR 452 and that line of authorities which apply those classic principles of adverse possession.**
 - IV. Whether or not, with respect to the statutory declarations, an applicant can tender a statutory declaration and rely on that statutory declaration as providing evidence of its contents to establish each of the elements in the definition of adverse possession without supplying detailed particulars which the Act requires an applicant to supply under section 4 through affidavit evidence.**
- 2. Counsel for the appellant shall file and serve written submissions in reply on or before 6th January 2025.**
- 3. The Chief Registrar shall disclose the file for this matter to the Attorney General through the Solicitor General and to the President of the Bar Association by way of Google Drive and that that disclosure be done on the date of this Order.**
- 4. The Chief Registrar is to make available to the Solicitor General and the President of the Bar Association the recording of the proceedings of**

the Court in this matter on 27th November 2024 on or before 29th November 2024.

5. Judgment is reserved pending the receipt of the submissions and pending any further oral arguments to be heard.

Reason

The Court requested the presence of the Attorney General and the President of the Bar Association to accept an amicus curiae brief in order to provide independent legal submissions on issues with respect to the application of the Possessory Titles Act of No. 12 of 2016 of the Laws of Grenada.

The Court raised questions which the parties present are to address in written submissions in order to assist the Court in arriving at a fair and just resolution of the matter. The questions raised concerned the application of the Possessory Titles Act, the effect of the Act with respect to persons applying with defective paper titles and whether there is an intent to depart from the classic principles of adverse possession as applied at common law. In relation to persons applying with defective title, the court inquired whether it was intended that tendering of such defective titles as evidence, without more, would satisfy the essential elements of the definition of 'adverse possession' under the Act and the evidential requirements of sections 4 and 5 of the Act. Finally, the Court reserved judgment on the appeal pending receipt of these submissions from the Attorney General and the President of the Bar Association and reply submissions by the Appellants.