

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
COMMONWEALTH OF DOMINICA
9th to 10th December 2024

JUDGMENTS

Case Name:

Augustin Stephen

v

Sabrina Butcher

[SLUHCMAP2022/0007]
(Saint Lucia)

Date:

Monday, 9th December 2024

**Coram for
delivery:**

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellant:

Mr. Horace Fraser

Respondent:

**Ms. Jodie J. Luke holding papers for Mr. Leslie
Prospere**

Issues:

**Commercial appeal – Partnership – Dissolution of the
partnership – Challenges to findings of fact made by
the learned trial judge – Whether this Court should
overturn the factual findings of the learned trial judge
– Whether the trial judge failed to properly analyse
the entirety of the evidence – Whether the learned trial
judge found as a matter of law that a partner does not
owe a fiduciary duty to another partner – Whether the**

learned trial judge was correct in rejecting the evidence of the appellant on his counterclaim

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Costs to the respondent to be assessed if not agreed within 21 days of today's date.**

Reason:

- 1. The Court of Appeal will not easily interfere with a judge's evaluation of the evidence or a judge's findings of fact and inferences of fact made by a judge especially when they depend to a significant extent upon the judge's assessment of witnesses he or she has seen and heard give evidence. An appellate court may intervene if a trial judge failed to analyse properly the entirety of the evidence. However, the Court will be slow to reverse a trial judge in their evaluation of primary facts.**

Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21 applied; Re B (a child) (care order: proportionality: criterion for review) [2013] UKSC 33 applied; Biogen Inc v Medeva plc [1997] RPC 1 applied.

- 2. It could not be said that the learned trial judge erred in her findings of fact. In respect of the first issue, it was open to the learned trial judge having seen and heard the witnesses for the parties to believe the version of events as outlined by the respondent and her witnesses to find that: (1) a partnership existed between the appellant and the respondent; and (2) the respondent did not breach any fiduciary duty owed to the appellant. Having seen and heard the witnesses, and then evaluated the evidence before her, the learned trial judge was entitled to reach the conclusions on the facts as she did.**

3. The appellant had not shown that the conclusions of the learned trial judge on the primary facts relative to the first and third issues were such that: (1) there was no evidence to support them; (2) the conclusions were based on a misunderstanding of the evidence; or (3) the conclusions were as such where no reasonable judge could have reached them, and that an appellate tribunal would interfere with them. The findings of the learned trial judge were supported by the evidence which she accepted based on her explained preference for accepting the respondent's evidence on the issues before her. Accordingly, the appellant had not established any basis warranting interference by this Court.
4. The learned trial judge did not hold as a matter of law that partners did not have a fiduciary duty to each other as alleged by the appellant. In fact, her statement that both the appellant and respondent owed each other a fiduciary duty as partners in the joint business to account for and manage the business finances contradicted that allegation by the appellant. Therefore, the ground of appeal that the learned trial judge misdirected herself and erred in law when she found that the respondent being a partner in a partnership business and being in charge of the finances of the business did not owe a fiduciary duty to the other partner consequently fails because: (1) the learned trial judge did not make any error of law; (2) she accepted that partners in a business owed a fiduciary duty to each other to account for and manage the business' finances; (3) the specific finding of the learned trial judge was that there was no specific fiduciary duty owed by the respondent in respect of the financial, accounting or business side of the business because the respondent did not have that relevant experience; and (4) the evidence did not reveal any breach by the respondent of any such fiduciary duty, had it existed.

Case Name: **1st National Bank Saint Lucia Limited (Qua
successor to Royal Bank of Canada)**

v

Winston Paul

**[SLUHCVAP2024/0011]
(Saint Lucia)**

Date: **Friday 9th December 2024**

**Coram for
delivery:** **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant: **Ms. Sardia Cenac Prospere and Mr. Arthur Compass**

Respondent: **Mr. Horace Fraser holding papers for Mr. Alvin St.
Clair**

Issues: **Civil appeal – Article 1009.1 of the Civil Code of Saint
Lucia – Interpretation of guarantee – Whether the
learned judge erred in the interpretation of guarantee
- Whether the learned trial judge erred in law in
conflating the obligations under the Loan and the
Guarantee and finding the Guarantee to be more
onerous - Whether the learned trial judge failed to
award interest by way of damages in accordance with
the Guarantee by mischaracterising the interest
payable on the Guarantee as compound interest**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. The appeal is allowed.**
- 2. The decision of the learned trial judge at
paragraph 1(ii) of the order is set aside and
substituted as follows:
(ii) As against the appellant the sum of
\$540,000.00 with interest at the rate of 7% per**

annum from 6th March 2023 until the date of payment.

3. The respondent shall pay costs in the appeal to the appellant to be assessed if not agreed within 21 days of the date of this order.

Reason:

1. Interpretation of a guarantee involves ascertaining the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. Thus, the question in this case is whether the reasonable person would understand that the phrase “debts and liabilities” includes any principal amount owing by Trinity to the appellant under the Loan and any outstanding interest on that principal amount. The factual matrix in this appeal was that the Guarantee was to protect the appellant from any financial loss occurring by reason that Trinity was unable to pay its debts and liabilities to the appellant under the Loan. There is nothing in the Guarantee which leads to the conclusion that interest is to be paid on the sum (representing total debts and liabilities) only in respect of the amount representing the principal of the Loan. Properly read, the clause covers the payment of interest on the total sum of debts and liabilities of Trinity and it does not matter that that sum included any unpaid interest on the Loan. Nothing in the relevant clause is ambiguous as to whether the phrase “debts and liabilities” includes any unpaid interest and there is therefore no need to have recourse to the contra proferentem rule.

Static Control Components (Europe) Limited v Egan [2004] EWCA Civ 392 applied; Reynolds v State Insurance Corporation Antigua and Barbuda HCVAP 2007/005 (delivered 8th February 2010, unreported) considered.

2. The effect of Article 1009.1 of the Civil Code is that interest from capital sums also bears interest when there is a special agreement to that effect. In this case, the Loan and the Guarantee are two separate agreements and the obligations under each are not the same. The Loan is relevant only in determining the total “debts and liabilities” of Trinity under the Guarantee. It is that sum that attracts interest under the Guarantee. It is technically not correct to refer to the portion of the debts and liabilities that represented “interest” under the Loan as “interest” under the Guarantee. For the purposes of the Guarantee, the respondent is not liable to pay compound interest as this would only be the case if the interest of 7 per cent was payable not only on the total sum of the debts and liabilities but also on any accumulated unpaid 7 per cent interest. Once it is accepted that for the purposes of the Guarantee, the only relevant interest is the 7 per cent to be paid by the respondent, the concerns of the learned trial judge that: (1) this results in an outcome which is more onerous to the guarantor, in compound interest being applied to a portion of the debt; (2) it is at odds with the facility which attracts interest only on a reducing balance; and (3) it is unreasonable to suggest that the liability of the guarantor in relation to interest should be different to that of the principal debtor, without a clear stipulation to that effect, are no longer live ones. The learned trial judge therefore erred in law in conflating the obligations under the Loan and the Guarantee. In any event, the trial judge’s finding that the Guarantee is more onerous does not affect the obligations of the respondent under the Guarantee. Consequently, no compound interest was applied to a portion of the debts and liabilities under the Guarantee that comprised interest under the Loan and Article 1009.1 is therefore not engaged.

Article 1009.1 of the Civil Code of Saint Lucia Chapter 4.01 of the Revised Laws of Saint Lucia 2015 considered.

Case Name:

**Harbour Club Limited et al
v
McMilan Monroe dba Tropical Decoration
[SLUHCVAP2023/0027]**

(Saint Lucia)

Date:

Friday 9th December 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Applicant: Ms. Vanessa Pinnock

Respondent: No appearance

Issues:

Civil Appeal - Application for leave to appeal – Dismissal of application for summary judgment – Test for granting leave to appeal – Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 (“CPR”) – Whether the intended appeal has a realistic prospect of success – Whether there is some other compelling reason why the appeal should be heard – Exercise of judicial discretion – Whether master’s refusal to enter summary judgment was plainly or blatantly wrong – Breach of Contract - Privity of contract – Whether there are no causes of action which have been made out against the applicants - Unjust enrichment not pleaded – The court’s power to make orders of its own initiative - CPR 26.2 - Whether the learned master erred in law and misdirected himself by failing to note from the pleadings that the respondent limited his claim to one for breach of contract only and claimed remedies in relation to that cause of action only and it was therefore not open to the learned master to hold that the issues of estoppel and unjust enrichment arise - Whether it is necessary to seek specifically the

remedy of restitution in order to make out a claim for unjust enrichment - Whether, a claim for unjust enrichment can subsist with one for breach of contract – Natural Justice – Whether master erred by not giving the parties an opportunity to be heard before making a determination on the issue of whether estoppel or unjust enrichment formed part of the respondent's case - Application for a stay of execution

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The applicants' application for leave to appeal the learned master's order dated 10th October 2023 in which he dismissed their application for summary judgment, is refused.
2. The application for a stay of execution falls away.
3. There is no order as to costs.

Reason:

1. The Court is empowered by CPR 62.2(8) to grant leave to a litigant to appeal a decision of a lower court if: a) it considers that the appeal has a realistic prospect of success; or (b) there is some other compelling reason why the appeal should be heard. Where the impugned decision involves the exercise of judicial discretion, such as the learned master's refusal to enter summary judgment, the Court is required to scrutinise the impugned decision to assess whether the judicial officer erred in principle and as a result made a blatantly wrong decision.

Rule 62.2(8) of the Civil Procedure Rules (Revised Edition) 2023 applied; *Othneil Sylvester v Faelleseje, A Danish Corporation* Saint Vincent and the Grenadines Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported) followed.

2. The purpose of pleadings is to enable the opposing party to know in sufficient detail what is the case being made against it so that that party can prepare to answer it. Ultimately and fundamentally, the Court in each case is not concerned with how much factual details are set out in the pleadings but more so with their adequacy for the purposes of placing the opposing litigants on notice of the factual and legal issues on which the pleader relies. No specific formula has to be employed for such purpose, provided that the particulars embody the essential components of the cause of action or defence. Additionally, in furtherance of its mandate to dispense justice, the court may, even in the absence of an express pleading regarding a specific remedy, grant relief to an aggrieved party provided that he or she has pleaded a particular cause of action.

Section 17 Eastern Caribbean Supreme Court (Saint Lucia) Act Cap 2:01 of the Revised Laws of Saint Lucia applied; Rule 8.6(2) of the Civil Procedure Rules (Revised Edition) 2023 applied; Halsbury's Laws of England Vol. 100 (2024) Unjust Enrichment, paragraph 9 applied.

3. In the instant case, it cannot be said that the respondent's claim is one for breach of contract only, limited to the written agreement between Sunrod and the respondent. On a closer examination of the statement of claim (when read in light of the defence and counterclaim); the reply to defence and defence to counterclaim; and the respondent's affidavit in response, it is quite clear that the issues are more complex. Significantly, the pleadings effectively delineate clear factual and legal disputes as between the respondent on the one hand and each of the applicants on the other hand. The pleadings level discrete causes of action against each of the three named defendants, in particular, allegations against the first applicant for breach of the written agreement; as well as claims against the second applicant of unjust enrichment and

estoppel which allegedly flow out of Sunrod's breach of the written agreement. Contrary to the applicants' assertions, this is not a proper case in which summary judgment should be granted to the applicants. Accordingly, the applicants are not assured a realistic prospect of success on this point.

Halsbury's Laws of England Vol. 88 (2019), paragraph 410 applied; Halsbury's Laws of England Vol 47 (2021) Nature, Classification and Principles of Estoppel paragraph 301 applied.

- 4. The criticism of the learned master's ruling that the respondent's claim is not confined to the written agreement but could extend to an oral contract and also representations by the applicants, hinges on the applicants' contentions that: a) there are no pleadings as to an oral contract or of such representations; and b) that the master failed to engage with the import of Articles 1163(2) and 1164 of the Civil Code of Saint Lucia. The argument as to absence of pleadings ignores paragraphs 8 and 9 of the statement of claim which are open to being interpreted as evidence of an oral contract. It is to be noted that Articles 1163(2) and 1164 respectively prohibit oral testimony: a) being given to contradict a written instrument; and b) in respect of matters where the value in question exceeds \$48.00. Neither provision is applicable because the learned master made no finding that a term in an oral contract contradicted an express term in the November 2015 (or November 2017) written contract or in any way amended or attempted to amend it.**
- 5. It is settled that a claim for unjust enrichment and breach of contract can subsist together. The authorities merely caution against doing so where the parties to the contract and to the**

claim of unjust enrichment are the same persons. Here, the applicants have denied the existence of a contractual relationship with the respondent. The respondent's claim against the second applicant is largely for unjust enrichment or based on estoppel. In either case, in the event of a finding that no contractual relationship exists between the opposing parties or even if one existed it has been discharged, the respondent may yet be able to rely on his assertions of unjust enrichment against either. The exhortation against merging breach of contract and unjust enrichment actions would not be applicable to the claims made against the applicants.

Halsbury's Laws of England Vol. 100 (2024) Unjust Enrichment, paragraph 24 applied; Macdonald v Costello [2011] EWCA Civ 930 distinguished; Barton and others v Morris and another [2023] UKSC 3 distinguished.

6. As to the applicants' contention that the respondent failed to specifically plead unjust enrichment as a cause of action, all that is required to capture the essence of a pleading for unjust enrichment is that the essential factual ingredients that are necessary to establish that cause of action are set out. The respondent outlined the elements of unjust enrichment in his claim. The fact that he did not use the term 'unjust enrichment' or any specific formulation is not fatal. It was therefore open to the learned master to find that unjust enrichment was pleaded. It is correct that the claim form does not include any remedies or other particulars that utilise the terms 'unjust enrichment' or 'estoppel' or even obliquely makes reference to them. However, having particularised such claims in the statement of claim, the respondent satisfied the requirement to set out his case shortly as required by CPR 8.7. Furthermore, it is important to note that the procedural rules do not impose an obligation on a claimant to mention the cause of action in

the claim form provided that it is particularised in the statement of claim.

East Caribbean Flour Mills Limited v Ormiston Ken Boyea Saint Vincent and the Grenadines Civil Appeal No. 12 of 2006 (delivered 16th July 2007, unreported) followed.

- 7. The applicants complain that the learned master did not invite them to address him regarding whether estoppel or unjust enrichment formed part of the respondent's case. It is trite law that a judge who intends to make a ruling of his own volition that is adverse to one party, must first give that party an opportunity to make submissions. The master ought to have invited the applicants to make submissions on that issue before making a ruling contrary to them. The learned master erred in principle by not affording the applicants that opportunity. However, the Court is of the view that this error was not fatal to the learned master's determination.**

Rule 26.2 of the Civil Procedure Rules (Revised Edition) 2023 applied.

- 8. The applicants' contention that the learned master erred in law by failing to find that the issues of an acknowledgment of the benefit of works done and a promise to pay by the second applicant were not supported by any of the evidence presented by the respondent, is an attempt to disguise as legal issues, matters which fall squarely within the realm of fact finding. In the Court's view, the applicants' criticisms on this score do not afford them a real prospect of success on appeal.**
- 9. In view of the conclusions that the applicants do not have a realistic prospect of success on appeal and consequently the dismissal of their application for leave to appeal, the application for a stay of execution falls away and is dismissed.**

Case Name:

**Jacob James
v
Rubis West Indies (Formerly TEXACO
West Indies Limited)**

**[ANUHLTAP2022/0001]
(Antigua and Barbuda)**

Date:

Tuesday 10th December 2024

**Coram for
delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant: Mr. Lawrence Daniels

Respondent: Mr. Anthony P. La Ronde

Issues:

Appeal against Industrial Court's decision – Unfair dismissal – Award of damages – Award of damages reduced by 90% - Whether appellant significantly contributed to his unfair dismissal thereby justifying the award of damages being reduced by 90% - Whether the Industrial Court erred in considering matters not foreshadowed by the respondent in dismissing the appellant when it reduced the award of damages by 90%

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the decision of the Industrial Court is allowed.**
- 2. The order at paragraph [44] of the ruling is set aside.**
- 3. The respondent is to pay the appellant the sum of \$220,500.00, being the amount assessed by the Industrial Court at paragraph [43].**

4. The respondent shall pay interest on that sum from 4th June 2021 until payment.

Reason:

1. An employer cannot rely on conduct that did not form part of the reason for dismissal as the basis for a reduction in the award of damages. This is especially so when these specific allegations would not have been relied upon by the employer and so would not have been put to the employee for him to make representations in response. An employer therefore must show that the conduct of the employee contributed to his dismissal and that conduct must have formed part of the basis of, or reasons for, the dismissal of the employee.
2. In determining whether to reduce an award of damages for unfair dismissal by an appropriate percentage, it is helpful for a court or Tribunal to consider: (i) whether there is a finding by the Tribunal that there was conduct of the employee in connection with the unfair dismissal which was culpable or blameworthy; (ii) whether there is a finding that the unfair dismissal was caused or contributed to some extent by the conduct of the employee concerned; and (iii) whether there is a finding that it was just and equitable to reduce the assessment of the employee's loss by the relevant percentage. There must be a finding by the Tribunal or court that the unfair dismissal was caused or contributed to some extent by the conduct which informed the employee's dismissal. A lack of this finding is necessarily fatal to any attempt to reduce the compensation or award to any employee for unfair dismissal.

Nelson v British Broadcasting Corporation (No. 2) [1979] IRLR 346 applied.

3. On the facts, there was no evidence at the hearing before the Industrial Court that the appellant had taken the respondent's diesel

without authorisation. The Industrial Court noted that without the critical eyewitness, it was deprived of potentially useful evidence to assist it with its findings of fact. Consequently, the Industrial Court could have made no such finding that the appellant was guilty of improper conduct that warranted his dismissal, and that this blameworthy conduct contributed to his dismissal. The Industrial Court's finding that the appellant breached the implied terms of his employment contract and breached his fiduciary relationship with his employer, played no part in the respondent's decision to dismiss the appellant. The Dismissal Letter made it clear that the appellant was being terminated owing to the incident concerning the unauthorised taking of diesel belonging to the respondent. From all accounts, the allegation of breach of implied terms would have first arisen in the Industrial Court's judgment and the appellant would not have had an opportunity to answer same. Since the conduct of breaching implied terms neither contributed to nor caused the appellant's dismissal, the Industrial Court erred by using this conduct as a basis for reducing the damages payable to the appellant by 90 per cent.

Case Name:

Sylvia O'Mard

v

[1] ABI Bank Ltd.

[2] Eastern Caribbean Central Bank

[3] The Attorney General

[ANUHCVP2021/0010]

(Antigua and Barbuda)

Date:

Tuesday 10th December 2024

**Coram for
delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant: Dr. David Dorsett

Respondents: Ms. Hazel Johnson holding papers for Mr. Justin L. Simon KC for the first respondent
Mr. Damian Kelsick for the second respondent
Ms. Carla Brookes-Harris for the third respondent

Issues:

Civil Appeal – Appeal against decision of the learned trial judge to dismiss application by way of originating motion – Section 3(a) of the Constitution of Antigua and Barbuda, 1981 – Right to protection of the law – Sections 3(c), 9(1) and 9(2) of the Constitution of Antigua and Barbuda – Right to protection from deprivation of property without fair compensation – Article 5C(5)(a) of the Eastern Caribbean Central Bank Agreement, 1983 (“ECCB Agreement”) - Whether the learned trial judge erred in not finding a breach of the Constitution before determining whether the alleged breach was justified – Whether Article 5C(5)(a) of the ECCB Agreement breached sections 3(a), 3(c), 9(1) and 9(2) of the Constitution of Antigua and Barbuda - Whether the learned trial judge erred in finding that the limitation on constitutional rights imposed by Article 5C(5)(a) was no more than is necessary to achieve the objectives of the statutory instrument

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against the decision of the learned trial judge is dismissed.
2. The order (albeit for different reasons) found at paragraph [48] of the judgment dismissing the appellant’s application by way of originating motion is affirmed.
3. No order as to costs.

Reason:

1. When construing Article 5C(5)(a) of the Eastern Caribbean Central Bank Agreement, the court must consider all operative parts. The First Part is linked to the Second Part and the Third Part

using the word 'and'. If the drafters intended the construction contended for by the appellant, the First Part would constitute the entire Article 5C(5)(a) and would not be inextricably linked by the use of the word 'and' to the Second Part and the Third Part. The general words in the First Part cannot be used to undermine the limitations of the specific examples given in the Second Part including the proviso contained in the Third Part. The combined effect of the Second and Third Parts is to give an Affected Person the right, among other things, to seek leave of the court to commence any action against the financial institution for the recovery of any claim. The general words in the First Part cannot override the specific words found in the Second and Third Parts. It must yield to them. The Second Part and the Third Part, when read together, make plain that the commencement of any action in respect of the recovery of any claim cannot be done without, inter alia, leave of the court or where the court so directs. Giving the entire Article 5C(5)(a) of the Eastern Caribbean Central Bank Agreement its plain meaning when read as a whole, there is no contravention of sections 3(a), 3(c), 9(1) and 9(2) of the Constitution of Antigua and Barbuda.

Sections 3(a), 3(c), 9(1) and 9(2) of the Constitution of Antigua and Barbuda, 1981 Cap 23 of the Laws of Antigua and Barbuda; Regina (JM (Zimbabwe)) v Secretary of State for the Home Department [2018] 1 WLR 2329 applied; Regina (O) v Secretary of State for the Home Department, Regina (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department [2022] UKSC 3; [2023] AC 255 followed; R (Quintavalle) v Secretary of State for Health [2003] UKHL 13 followed; [2003] 2 AC 687 followed; Sheikha Amena Ahmed H A Al-Thani and another v Sheikha Aisha Mohammed Ali Abdullah Al Thani and 2 others [2024] UKPC 35 followed

2. The First Part does not seek to regulate access to the court by an Affected Person. It makes plain that the Affected Person has no remedy against the financial institution in respect of any claim. However, it cannot be ignored or doubted that the Second and Third Parts, when read together, confer on an Affected Person the right to seek leave of the court to commence any action against the financial institution for the recovery of any claim. The learned trial judge was correct in stating that when read as a whole Article 5C(5)(a) of the ECCB Agreement is rationally connected to the legislative objective.

de Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69 applied; R v Oakes [1986] 1 SCR 103 applied.

3. Article 5C(5)(a) read as a whole properly balances the interests of society and the proper management of the assets of financial institutions under the control of the Eastern Caribbean Central Bank with those individuals and groups who have claims against the financial institution by providing Affected Persons with the right to seek leave of the court to commence any action against the financial institution for the recovery of any claim. If the learned trial judge was correct in holding that a prima facie case of infringement was established, there would be no contravention of sections 3(a), 3(c), 9(1) and 9(2) of the Constitution because Article 5C(5)(a) of the Eastern Caribbean Central Bank Agreement is required in the public interest or is reasonably justifiable in a democratic society.

Sections 3(a), 3(c), 9(1) and 9(2) of the Constitution of Antigua and Barbuda, 1981 Cap 23 of the Laws of Antigua and Barbuda.

Case Name:

[1] Electrical Associates Limited

**[2] Marcellinus Stephen Trading as Ms.
Stephen Tiling**

v

Sunrod Property Inc.

**[SLUHCMAP2024/0001]
(Saint Lucia)**

Date: **Tuesday 10th December 2024**

Coram: **The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellants: **Ms. Wauneen Louis-Harris**

Respondent: **Ms. Vanessa Pinnock**

Issues: **Interlocutory Appeal – Expert Report – Part 32 Civil Procedure Rules 2000 (CPR) – Application to strike out expert report on the basis that the report breached the provisions of CPR Part 32 –The court’s case management powers – Part 26 Civil Procedure Rules (Revised Edition) 2023 – Whether the learned trial judge erred in the exercise of her discretion by striking out the expert report – Whether the learned trial judge erred in not hearing the amendment application – Whether the learned trial judge erred in not allowing the appellants to amend the expert report**

Result / Order: **IT IS HEREBY ORDERED THAT:**

- 1. The appeal against the learned trial judge is allowed.**
- 2. Paragraph [2] of the order is set aside.**
- 3. The expert shall file and serve an amended Expert Report to comply with CPR Part 32, within 21 days of the date of this order, failing which the Expert Report shall stand struck out without further order of this Court.**

4. Costs to the appellants to be assessed if not agreed within 21 days of the date of this judgment.

Reason:

1. In striking out the Expert Report, the learned trial judge deprived herself of the opportunity to benefit from an expert report that is meant to assist the court in resolving the dispute between the parties. Striking out should not be the first step when there is a breach of CPR Part 32. The draconian response of striking out should only occur in certain circumstances. Where there is continuous non-compliance or there is a weak case, the court is open to striking out. Striking out should be considered particularly in cases where the impartiality of the expert is in question. Where the party is granted previous opportunities to remedy deficiencies in expert reports, but failed to do so, the court would conclude that the justice of the case would require striking out. Accordingly, these circumstances did not arise in the instant case.

Barbara Campsell (also known as Barbara Daniel) v David Sookwa SLUHC VAP2014/0018 (delivered 19th February 2016, unreported) applied; N.E.M (West Indies) Insurance Ltd. v Strisiver, Ashraph and Mhc (2000) Ltd. TT 2013 CA 4 applied; R (on the application of Good Law Project Ltd.) v Secretary of State for Health and Social Care [2021] EWHC 2595 (TCC) applied.

2. Out of the nine (9) deficiencies identified by the learned trial judge at paragraph [16] of the Order, four (4) of them are not established and the other five (5) are not so “substantial” or “egregious” that they cannot be cured by allowing the appellants an opportunity to remedy the deficiencies to file and serve an amended Expert Report, with an appropriate unless order to require compliance. In any event, the court still retains the power on application by the other party to strike out any

revised Expert Report if it still does not comply with any order made by the court. The nature of the five (5) deficiencies did not justify recourse to the draconian power of striking out. To the extent to which the learned trial judge relied on the four (4) alleged breaches in arriving at her decision to strike out the Expert Report, the learned trial judge, was influenced by irrelevant factors and considerations. As a result of the error or the degree of the error in principle, the learned judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

Dana UK Axle Ltd v Freudenberg FST GmbH [2021] EWHC 1413 TCC applied; Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 applied.

3. There is no doubt that the decision of the learned trial judge in striking out the Expert Report was a case management decision. Although it has often been stated by this Court that an appellate court would not easily interfere with a case management decision of a judge or master, it is now settled law that it is inappropriate for an appellate court to interfere with a case management decision unless it was "plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree". Under the court's general case management powers in CPR 26.1, the court is granted the power under CPR 26.1(w) to make an unless order specifying the consequences of any failure to comply with any rule, practice direction, or order. Rather than striking out, in an appropriate case it is open to the court to require the party in breach to remedy the deficiencies by a specific date, failing which the expert report would be struck out. It will only be in the rarest of cases and for good reason would the court exclude expert evidence that is designed to assist it. Therefore, the learned trial judge ought to have given the appellants the opportunity to remedy

the breaches rather than outrightly striking out the Expert Report.

Rules 26.1 and 26.1(w) of the Civil Procedure Rules (Revised Edition) 2023, applied; Employers International et al v Boston Life and Annuity Company Ltd. British Virgin Islands Civil Appeal No. 5 of 2007 (delivered 6th November 2008, unreported) applied; Sergey Taruta v JSC VTB Bank BVIHCMAP2021/0002, BVIHCMAP2021/0008, BVIHCMAP2021/0012 (delivered 2nd June 2021, unreported) applied; Julian Svirskey et al v Arman Oyekenov et al BVIHCMAP2022/0064 (delivered 12th February 2024, unreported) applied; Real Time Systems v Renraw Investments Limited [2014] UKPC 6 followed.

4. It is proper procedure for applications to be dealt with in the order that they are filed. The Strike out Application was filed on 7th August 2023 and the Amendment Application was filed on 22nd November 2023, one day before the hearing of the Strike out Application on 23rd November 2023. Given the timeliness for the respondent to have replied to the Amendment Application in accordance with CPR 11.12, it is patently clear that the Amendment Application could not have been heard on 23rd November 2023.

Rule 11.12 of the Civil Procedure Rules (Revised Edition) 2023 applied; St. Kitts Nevis Anguilla National Bank v Caribbean 6/49 Limited Saint Christopher and Nevis Civil Appeal No. 6 of 2002 (delivered 31st March 2003, unreported) applied.

APPLICATION

Case Name:

**Peter Ducreay
Maria Leblanc Ducreay
v**

1. Tracy Louisy
2. Cassia Wiltshire
3. Keri-Ann Jno Baptiste George
4. Jonell Degalerie Charles
5. Annia Peters

[DOMHCVAP2024/0010]

(Commonwealth of Dominica)

Date: Monday 9th December 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal

Appearances:

Appellant: In Person

Respondents: No appearance

Issues: Application for leave to appeal - Exercise of discretion for grant of leave - Whether the appeal has a reasonable chance of success - Costs Order - Part 65 of the Civil Procedure Rules (Revised Edition) 2023 - Whether the master erred in awarding prescribed costs in the circumstances

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application for leave to appeal against the costs order made on 11th May 2024 is dismissed.

Reason: Before the Court was an application filed by the applicants on 10th June 2024 for leave to appeal against the costs order made by the learned master on 11th May 2024. The learned master ordered that prescribed costs be awarded to the respondents in

the sum of EC\$26,793.25. The learned master in her decision indicated that the respondents were entitled to their costs on a prescribed basis as per appendix (b) and (c) of Part 65 of the Eastern Caribbean Civil Procedure Rules, 2000 ("CPR"). Further as the matter had not progressed beyond the case management stage, she awarded the respondents 55% of their full costs, the value of the claim being EC\$374,650.00.

The Court was of the view that the learned master exercised her discretion in this matter in accordance with part 65. 5 (1) of the CPR which indicates that appendices (b) and (c) are to be applied in circumstances such as these. The Court could find no error in principle in the way or manner in which the learned master exercised that discretion. The Court was also mindful that in accordance with rule 62.2 (8) leave to appeal may be granted only where (a) the Court considers that the proposed appeal has a realistic prospect of success or (b) where there is some other compelling reason why the appeal should be heard.

Having heard and read the submissions of the applicants the Court was satisfied that the appeal had no realistic prospect of success and the applicants had not shown other compelling reasons why the appeal should be heard. Accordingly, the Court dismissed the application for leave to appeal the costs order in the circumstances.

Case Name:

**Leslie Emanuel
(Personal Representative of Leopold Allan Emanuel)**

v

**1. Ace Engineering Ltd
2. Anthony Le Blanc
[DOMHCVAP2024/0007]**

(Commonwealth of Dominica)

Date:

Monday 9th December 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal

Appearances:

Appellant: Mrs. Dawn Yearwood- Stewart

Respondents: Ms. Lisa de Freitas

Issues: Interlocutory Civil Appeal - Representation order - Rule 21.7 of the Civil Procedure Rules, 2023 - Whether the master erred in appointing the appellant, who was the 1st Claimant in the claim in the court below, to represent the estate of Lennard Emmanuel - Whether the master failed to consider the elements of CPR 21.7(2) in deciding to appoint the appellant to represent his deceased brother's estate in the proceedings - Whether the appointment of the appellant amounted to a material irregularity - Whether master took into account irrelevant facts - Whether decision to appoint appellant went against the weight of the evidence including that the appellant in his affidavit averred that he was unwilling to represent the estate

Type of Order: Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. Costs to the respondents in the appeal in the sum of \$1,000.00 to be paid within 21 days of this order.

Reason: This was an appeal by way of Notice of appeal filed on 5th July 2024 by the appellant, Leslie Emmanuel, against the order of the learned master made on 1st May 2024. By that order the master appointed the appellant as the representative of the Estate of Lennard Emmanuel in the proceedings below. The learned master also made certain other orders listing

the matter for case management; for the assessment of damages on a date to be fixed by the court; for a migration bundle properly indexed and paginated to be filed by the defendants no later than 14 days; and for the defendants to take carriage of the order. It was against all 4 limbs of the order that the appellant appealed.

The basis for the learned master's order was a notice of application which had been filed in the proceedings below on 28th February 2024 to appoint Leslie Emmanuel as the representative of the Estate of Lennard Emmanuel; Lennard Emmanuel having been one of the judgment debtors in the said proceedings. Mr. Leslie Emmanuel, the appellant, was already on record in the proceedings in a representative capacity for one of the judgment debtors. The documents disclosed that there had been several applications that had been filed for the appointment of a personal representative of the Estate of Lennard Emmanuel. The Court considered the written and oral submissions by learned counsel for the appellant and counsel for the respondents and also considered the grounds of appeal as set out in the notice of appeal.

The governing provision in the Civil Procedure Rules (Revised Edition) 2023 ("CPR") is CPR 21.7 which provides for proceedings against the estate of a deceased person, and it was this rule that was the basis of the notice of application in the court below. CPR 21.7(1) provides that: "[i]f in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings." It was not in question that Mr. Lennard Emmanuel was a party to the proceedings before his death and therefore a person interested in the proceedings. CPR 21.7(2) provides that: "A person may be appointed as a representative if that person- (a) can fairly and competently conduct proceedings on behalf of the estate, whether or not an application for a grant of representation has been made or is likely to be made; and (b) has no interest adverse to that of the estate of the deceased person."

One of the grounds of appeal was that Mr. Leslie Emmanuel did not consent to being appointed as the representative of the estate of Lennard Emmanuel. However, CPR 21.7(3) provides that the court may make a representative order on or without application either with the consent of the person to be appointed or on notice to that person where there is no consent. It was not in dispute that the application in the court below was on notice to Leslie Emmanuel.

The main thrust of the appeal was that the learned master in her decision did not give consideration to the two requirements under CPR 21.7(2), that is, that the person to be appointed, Mr. Leslie Emmanuel, can fairly and competently conduct the proceedings on behalf of the estate and, secondly, that he had no interests adverse to that of the estate. In relation to that 2nd requirement, Mr. Leslie Emmanuel filed an affidavit in which he did not assert that he had any interest adverse to the estate of the deceased. It would have been surprising had that been asserted because the appellant was already a representative party to the proceedings in relation to the other party who is a judgment debtor in the proceedings. In relation to the 1st requirement that the person appointed can fairly and competently conduct proceedings on behalf of the estate, the learned master in one of the recitals of the order made on 1st May 2024 stated “the court having considered Rule 21.7 of the CPR 2023”.

In the Court’s view that must be construed that the learned master had given consideration to all of the provisions of CPR 21.7, including sub-rule (2)(a). The master then went on to say in that recital that “notwithstanding the non- filing of any response by the first named claimant, the court taking into account the previous objections of the claimant to act as representative, and the reasons for appointing him outweighing the reasons not to appoint him”. The Court was satisfied that notwithstanding that the learned master did not in the order expressly state that she was satisfied that the appellant could fairly and competently conduct proceedings on behalf of the estate, the learned master must have given some

consideration to that requirement and, in any event, the appellant was someone who was already, in a representative capacity, a party to the proceedings and presumably fairly and competently conducting proceedings on behalf of that estate.

The Court, having given careful consideration to the grounds of appeal, was not satisfied that the master erred or had done so to the extent where the Court ought to set aside the order made on 1st May 2024. In the circumstances, the appeal was dismissed and costs awarded to the respondents.

Case Name:

**Moses O'Brien
v
Laurel Esprit
[DOMMCVAP2022/0002]**

(Commonwealth of Dominica)

Date:

Monday 9th December 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal**

Appearances:

Appellant: Mr. David Bruney

Respondent: No appearance

Issues:

Magisterial Civil Appeal - Tenancy agreement - Misrepresentation - Whether at the time of execution of the agreement the respondent had materially represented that the entire building was included for the benefit of the appellant - Whether the agreement is voidable and may be set aside - Breaches of agreement - Whether the appellant failed to comply with the terms for giving notice as provided in paragraph 14(2) of the agreement - Whether the appellant failed to pay for goods left for his use and benefit - Whether the appellant failed to pay the

outstanding electricity bill - Whether the appellant failed to pay the balance on the last payment made for the month of January

Type of Order

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

The matter is adjourned to the next sitting of the Court for the Commonwealth of Dominica scheduled for the week commencing 7th April 2025.

Reason:

The Court noted that Counsel for the respondent was unwell and that the respondent was not present. There was no objection by counsel for the appellant for an adjournment in the circumstances. Accordingly, the Court was minded to adjourn the hearing of the appeal to the next sitting of the Court for the Commonwealth of Dominica.

Case Name:

**Petrona Jno Baptiste
v
Royer George
[DOMMCVAP2023/0002]
(Commonwealth of Dominica)**

Date:

Monday 9th December 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: Mr. Tiyani Behanzin

Issues:

Magisterial Civil Appeal - Breach of terms of lease - Arrears of rent - Appellant found liable exparte and ordered to pay the respondent the amount of \$7600.00 plus stamps of \$7.50 and costs of \$150.00 for a total of \$7,757.50 - Whether the learned magistrate erred in law and misdirected himself by delivering judgment at the first hearing without first determining the reasons for the appellant's non-attendance - Whether the learned magistrate improperly exercised his discretion by not allowing the appellant to be heard - Whether the learned magistrate failed to adhere to the claim by the respondent which sought to recover \$800 rental fees in arrears plus costs, and in the absence of additional information, erroneously ordered the appellant to pay a sum of \$7,757.50 - Whether the appellant was notified of a change in the sum claimed - Whether the learned magistrate decided the case on its merits - Whether the appellant has a good and arguable case

Type of Order

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The judgment of the learned magistrate dated 17th January 2023, including the award of costs is set aside.**
- 2. The matter is hereby remitted to the magistrate's court to be reheard before another magistrate.**
- 3. The appellant is awarded her costs in the sum of EC\$150.00.**

Reason:

Having heard the appellant and counsel for the respondent, the Court was not minded to grant an adjournment. The learned magistrate, made an order on 17th January 2023, that the appellant was to pay the sum of EC\$7600.00 plus stamps in the sum of EC\$7.50 and costs for a total of EC\$7757.50. The claim before the court was for the sum of EC\$800.00.

The appellant appealed from that decision by way of a notice of appeal filed on 19th October 2023. The Court found that the learned magistrate did not err in hearing the matter in the absence of the appellant, the appellant having been warned on the previous occasion as to the hearing date of 17th January 2023, her name having being called, and she not appearing. However, the Court found that the learned magistrate did err in awarding the respondent the sum of \$7600.00 as arrears of rent. The award of \$7600.00 covered a period which was in excess of the lease signed by the parties with no evidence having been led before the learned magistrate that the lease had been extended.

Case Name:

**Davidson Ettienne
v
The State
[DOMMCRAP2019/0018]**

(Commonwealth of Dominica)

Date:

Monday 9th December 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal**

Appearances:

Appellants:

Mrs. Zena Moore Dyer

Respondent:

Mrs. Sherma Dalrymple, Director of Public Prosecutions

Issues:

Magisterial Criminal Appeal - Appeal against conviction and sentence - Possession of Cannabis - Possession with intent to supply cannabis in excess of 15 grams to wit 14,000 grams - Incomplete record of appeal - Delay - Whether the conviction is unsafe and ought to be quashed because there was no cross

**examination of the prosecution's witness Sgt
Philsbert Bertrand**

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The sentence of the magistrate is quashed.**

Reason: The Court noted the concession made by the Director of Public Prosecutions and accordingly allowed the appeal and quashed the decision of the learned magistrate.

Case Name:

**[1] Tetiana Ieremeieva
[2] Roman Yeremeiev
v
Estera Corporate Services (BVI) Limited
[BVIHCMAP2024/0017]
(Territory of the Virgin Islands)**

Date: Monday, 9th December 2024

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal

Appearances:

Appellants: Ms. Hannah Ilett with her Ms. Jennifer Jenkins and
Ms. Sophie Christodoulou

Respondent: Mr. Robert Weekes KC with him Mr. James Walmsly,
Ms. Claire Goldstein and Ms. Victoria Lissack for the
respondent in the appeal
Mr. Christopher McCarthy holding a watching brief for
the second and third respondents in the court below

Issues:

Commercial appeal - Appeal against judge's decision to strike out parts of amended statement of claim - New points taken on appeal - Whether the appellant's grounds of appeal constitute new points on appeal - Trustee de son tort - Whether the learned judge erred in holding that the question of whether the respondent could be a trustee de son tort was a short question of law suitable for determination on a strike out application - Whether the learned judge erred in failing to find that there was no requirement for a pre-existing trust or fiduciary relationship at all despite finding that it is not necessary for a finding of trusteeship de son tort that there was a pre-existing express trust - Whether the learned judge erred in holding that the second defendant could never be a category 1 constructive trustee - Whether the learned judge erred in his exercise of discretion under CPR 26.3(1)(b) and should have allowed the appellant's claims to be determined at trial - Whether the appellant was deprived of valuable financial claims which could only be dealt with properly at trial - Setting aside 'ex tunc' - Whether the learned judge erred in concluding that the appellant could not maintain a case that the respondent's conduct of its putative trusteeship was governed by VISTA until the Deed of Amendment was set aside on 2nd May 2018 - Whether the effect of setting aside was to treat the Amendment Deed for all purposes as though it never existed

Type of Order

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

The matter is adjourned to Tuesday 10th December 2024.

Reason:

Before the Court was an appeal filed on 25th June 2024 challenging the decision of Wallbank J allowing the respondent's strike out application. Before hearing counsel for the parties on the substantial issues on the appeal the Court noted that the appellant's grounds of appeal set out in their written submissions filed on 25th June 2024 revealed potential new points

on appeal. The Court heard submissions from counsel for both parties on whether those points are indeed new and whether an application to amend the notice of appeal was necessary.

The Court determined that ground 2 should be permitted to be advanced and was not satisfied that an amendment was necessary as the matters raised in ground 2 had been foreshadowed in the grounds set out in the notice of appeal filed on 25th June 2024 in particular set out in paragraph 9 under the heading details of the findings challenged and grounds of appeal. The Court made it clear for the avoidance of doubt that the Court would not entertain any submissions that deviate from the way in which the matter is set out in the appellant's grounds of appeal and in the pleaded case.

With respect to ground 3, the Court was again satisfied that this was not a new point and were minded to let the arguments advance as they were set out, in particular, in paragraph 10 under the heading of details of findings challenged and grounds of appeal. The Court again made clear that the appellant was confined and should be consistent with the way the case is pleaded in the court below.

With respect to ground 4, the Court was of the view that this is an entirely new point that should not be permitted to be advanced on appeal. The Court was not persuaded by the reasons advanced by the appellant to explain why the point was not raised before nor was the Court persuaded by the arguments advanced regarding the question of prejudice. That ground of appeal was accordingly not permitted to be advanced before the Court.

The Court then heard the appellant on the substantive issues on appeal and subsequently adjourned the matter to 10th December 2024 to complete the hearing of the appeal.

Case Name:

Unicomer (St. Vincent) Ltd
v

**1. Appeal Commissioners
2. The Comptroller of Inland
Revenue**

[SVGHCVAP2021/0010]

(St. Vincent and the Grenadines)

Date: Tuesday 10th December 2024

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

Appearances:

Appellant/Applicant: Mr. Roderick Cordara with Mr. Barrie Attzs and Mr. Mikhail Charles

Respondents: Mr. Grahame Bollers for the first respondent
Mr. Duane Daniel for the second respondent

Issues: Final Leave to Appeal to His Majesty in Council -
Leave as of right under section 99 (1)(a) of the
Constitution of St. Vincent & The Grenadines

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Applicant is granted final Leave to Appeal to His Majesty in Council against the Judgment.
2. The Record of Appeal shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay.
3. Costs of the Motion shall be costs in the appeal to His Majesty in Council.

Reason: The Court read the notice of motion filed by the Applicant on 13th November 2024 for Final Leave to Appeal to His Majesty in Council (the “Application”)

against the decision of the Court of Appeal dated 17th April 2024 (“the Judgment”).

The Court also read (i) the affidavit of Lakita Harry filed in support of the Application on 13th November 2024 together with Certificate of Exhibits LH1 - LH3; (ii) the supplemental affidavit of Lakita Harry together with Supplemental Certificate of Exhibits LH4 filed 18th November 2024; (iii) the email from the 2nd Respondent dated 2nd December 2024 stating that the 2nd Respondent does not intend to file any response in the matter; (iv) the email from the 1st Respondent dated 3rd December 2024 stating that the 1st Respondent does not object to the Motion.

It was further noted that the Record of Appeal was submitted for certification by the Registrar on 1st November 2024. The Court noted that Conditional Leave to Appeal had been granted on 23rd July 2024 and was satisfied that the conditions had been satisfied by the Applicant.

Case Name:

Financial Services Regulatory Commission

v

Sundry Workers

[ANUHLTAP2020/0008]

(Antigua and Barbuda)

Date:

Tuesday 10th December 2024

Coram:

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

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

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

Appearances:

Appellant:

Mr. Hugh Marshall

Respondent:

Mr. Cosbert Cumberbatch

Issues:

Civil Appeal - Unfair dismissal - Dismissal by redundancy - Section C58 of the Antigua and Barbuda Labour Code - Reasonableness of termination - Whether the Tribunal erred in finding that the dismissal of the employees was unfair - Whether the test for reasonable termination is confined to events leading up to the termination and not events that occurred after the termination - Whether the Tribunal erred in finding that the employer acted unreasonably in terminating the employees after the commencement of the proceedings before the Labour Commissioner and in the Industrial Court - Whether the Tribunal erred by finding that the dismissal of the employees was tantamount to a lockout - Section 20 of the Antigua and Barbuda Labour Code - Award of Compensation - Immediate loss - Whether Tribunal erred in awarding immediate loss to the employees - Whether the evidence did not support making such an award - Duty of employee to mitigate loss - No evidence of mitigation

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Valentine Joseph

v

Bernard Pacquette

[DOMMCVAP2023/0001]

(Commonwealth of Dominica)

Date:

Tuesday 10th December 2024

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

Appearances:
Appellant: Mrs. Dawn Yearwood - Stewart
Respondent: Ms. Daina Matthew

Issues: Magisterial civil appeal - Contempt of court - Section 215 of the Magistrate's Code of Procedure Act - Whether the learned magistrate erred by committing the appellant to prison in contempt of court - Whether the magistrate erred by failing to give the appellant the option of a fine as per section - Whether the magistrate erred by failing to indicate to the appellant that he was considering finding the appellant in contempt of court - Concession of appeal by respondent

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The decision of the learned magistrate to convict and sentence the appellant for a contempt of court dated 12th December 2022 is set aside.

Reason: The Court had regard to the submissions by counsel for both parties. Of particular note were the concessions made by counsel for the respondent that the learned magistrate failed to follow the correct procedure as set out in the Magistrate's Code of Procedure Act Chap. 4:20 concerning contempt proceedings and instead hastily committed the appellant to prison in circumstances where he was only allowed to apply a money penalty upon conviction, and only when in default of such money

penalty, to 7 days' imprisonment. Having regard to the respondent's concession of the appeal, the appeal was allowed, and the decision of the learned magistrate was set aside.

Case Name:

**Tetiana Ieremeieva
Roman Yeremeiev**

v

Estera Corporate Services (BVI) Limited

[BVIHCMAP2024/0017]

(Territory of the Virgin Islands)

Date:

Tuesday 10th December 2024

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco Henry, Justice of Appeal**

Appearances:

Appellant:

**Ms. Hannah Ilett with her Ms. Jennifer Jenkins and
Ms. Sophie Christodoulou**

Respondent:

**Mr. Robert Weeks KC with him Mr. James Walmsly,
Ms. Claire Goldstein and Ms. Victoria Lissack for the
respondent in the appeal**

**Mr. Christopher McCarthy holding a watching brief for
the second and third respondents in the court below**

Issues:

**Commercial appeal - Appeal against judge's decision
to strike out parts of amended statement of claim -
New points taken on appeal - Whether the appellant's
grounds of appeal constitute new points on appeal -
Trustee de son tort - Whether the learned judge erred
in holding that the question of whether the
respondent could be a trustee de son tort was a short
question of law suitable for determination on a strike
out application - Whether the learned judge erred in
failing to find that there was no requirement for a pre-
existing trust or fiduciary relationship at all despite
finding that it is not necessary for a finding of
trusteeship de son tort that there was a pre-existing**

express trust - Whether the learned judge erred in holding that the second defendant could never be a category 1 constructive trustee - Whether the learned judge erred in his exercise of discretion under CPR 26.3(1)(b) and should have allowed the appellant's claims to be determined at trial - Whether the appellant was deprived of valuable financial claims which could only be dealt with properly at trial - Setting aside 'ex tunc' - Whether the learned judge erred in concluding that the appellant could not maintain a case that the respondent's conduct of its putative trusteeship was governed by VISTA until the Deed of Amendment was set aside on 2nd May 2018 - Whether the effect of setting aside was to treat the Amendment Deed for all purposes as though it never existed

Type of Order

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.