

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT LUCIA
14th – 16th October 2024

JUDGMENT

Case Name:

Lucien Joseph
v
Delia Daniel

[SLUHCVAP2023/0026]
(Saint Lucia)

Date:

Monday, 14th October 2024

**Coram for
delivery:**

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

Appearances:

Appellant:

Mr. Eghan Modeste

Respondents:

**Ms Natalie Dabreo holding papers for Mrs Cynthia
Hinkson-Ouhla**

Issues:

**Civil appeal – Notarial will – Whether a notarial will
satisfies the requirements of a deed – Civil Code – Code
of Civil Procedure – Non Contentious Probate Rules -
Whether the learned judge erred by not considering
whether the appellant being a beneficiary under the will
was entitled to inspect it as an interested party – Whether
the learned judge failed to have regard to the relevant
principles of statutory interpretation such as the
Vagliano Rule and ignored other material considerations
such as the likely prejudice to the interested party**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed on all grounds except the fourth ground of appeal.**
- 2. The fourth ground of appeal is dismissed.**
- 3. The fifth ground of appeal is withdrawn and dismissed.**
- 4. The orders made at subparagraphs 1 and 2 of paragraph 14 of the learned judge's orders are set aside and replaced with the following:**
 - (a) The appellant Mr. Lucien Joseph as a beneficiary of the 2019 will of Hester Joseph is entitled to inspect the original of the said will.**
 - (b) The respondent Ms. Delia Daniel shall within 14 days of this order grant access to Mr. Lucien Joseph to inspect the original of the will of the deceased Hester Joseph executed on 18th April 2019, at the respondent's chambers on a day and at a time to be mutually agreed by the parties.**
 - (c) The respondent Delia Daniel shall pay the appellant Lucien Joseph the costs of this appeal to be assessed within 21 days of today's date, if not agreed.**

Reason:

- 1. The learned judge did not address Mr. Joseph's claim to be entitled to inspect the will purely as a beneficiary under the will. This was a live issue in the matter and ought to have been resolved. The learned judge erred in not considering it. It therefore fell to this Court to do so. It is established and universally accepted that the Supreme Court has exclusive jurisdiction over the issuance of grants of probate and all related matters pertaining to the administration of a deceased's estate. This includes determining questions on the validity of a testamentary instrument, interpretation of the same and by**

extension access to relevant records. It is settled law that as part of the Court's exclusive jurisdiction in respect of probate proceedings and in the exercise of its inherent jurisdiction, it is empowered to make orders as necessary to fulfill its mandate in advancing the course of justice and thereby uphold the rights of litigants including beneficiaries.

Sections 11 and 22(3) of the Supreme Court Act Cap. 2.01 of the Revised Laws of Saint Lucia 2021 applied; Halsbury's Laws of England Vol. 11 (2020) para. 23 applied.

2. Articles 782 and 795 of the Civil Code clearly and expressly vest ultimate custody of the original notarial wills in the primary or sole notary who witnessed the execution of a notarial will. The Non-Contentious Probate and Administration of Estates Rules (NCPR') contemplates that the grant of probate and the original will are recorded and registered in the court's registry and also made available to the public for inspection or extraction of copies. This rule (which constitutes subsidiary legislation) is made and must be interpreted subject to any contrary provision in the Civil Code, CCP or other primary legislation. It permits no derogation from the strict letter of Articles 782 and 795 of the Civil Code that a notarial will is to remain in the executing notary's custody and does not become or form part of the physical record or documentation in the Probate registry. With respect to access to original testamentary instruments by a beneficiary, the NCPR has in rule 60 codified the right limited to non-notarial wills and lends tacit acknowledgment to the reality that all probate-related proceedings are inherently judicial and must necessarily uphold the highest standards of probity and be conducted under the court's perpetual scrutiny if the system and its processes are to maintain any credibility. It follows ineluctably that the Court in its inherent jurisdiction is empowered to compel a notary to permit inspection of the original will to any interested party including a beneficiary under the will, or other member of the public in appropriate cases. This authority achieves nothing more than

the ends of justice contemplated by and effected in respect of non-notarial wills by rule 60 of the NCPR.

Articles 782 and 795 of the Civil Code of Saint Lucia Chapter 4.01 of the Laws of Saint Lucia Revised Edition 2014 applied; Rule 60 of the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules ('NCPR') Statutory Instrument 104/2017 considered.

3. Neither Article 782 nor Article 795 of the Civil Code prohibits the grant of permission to a beneficiary (by a notary or by court order) to inspect the original notarial will in the hands of a notary or discourages such a practice. Furthermore, the absence of express provision in the Civil Code or CCP stating that a beneficiary is entitled to such permission neither constitutes a prohibition against inspection of the original will by him nor renders the Court impotent to make such an order. In this case, it is incumbent on the court to give recognition to the parallel entitlement of Mr. Joseph as a beneficiary under a notarial will to inspect the original 2019 will. Thus Mr. Joseph by reason of him being a beneficiary is entitled to this access.

Articles 782 and 795 of the Civil Code Chapter 4.01 of the Laws of Saint Lucia Revised Edition 2014 applied; Article 978 of the Code of Civil Procedure Chapter 4.01A of the Laws of Saint Lucia Revised Edition 2014 applied; Quebec Code of Civil Procedure Chapter C-25.01 considered.

4. An analysis of the language and context of the use of a term or expression in the Civil Code is the primary and an indispensable tool of interpretation in construing the statute. In essence, the Civil Code should be interpreted internally or by reference to the language in it without additions or deletions or the use of external aids, unless there is a valid or cogent reason for doing so. This rule of statutory interpretation is called the Vagliano rule. While the learned judge addressed her mind in some way to

the codal context principle, she stopped short of conducting a full examination as required to give effect to the Vagliano Rule and the codal context principle of interpretation, because she did not look at the Civil Code for any definition of 'deed'; or at the other provisions of the CCP for contextual assistance in interpreting the term 'deed'. The learned judge therefore erred in law by not fully considering and applying the Vagliano Rule in this exercise.

Bank of England v Vagliano Brothers [1891] A.C. 107 applied; Revue général de droit – The Interpretation of the Civil Code of Saint Lucia by Sir Vincent Floissac (1983) considered.

5. The appellant's contention that because 'will' is defined in the Civil Code to mean a testamentary instrument, that definition should be read together with the definition of 'deed' in Article 2141 to produce a broad construction of 'deed' which encompasses a notarial will, is convoluted and would lead to absurdity. More fundamentally, it would do violence to the rules of interpretation and does not accord with the Vagliano Code. That argument is not sustainable in law.

Bank of England v Vagliano Brothers [1891] A.C. 107 applied; Article 978 and 2141 of the Code of Civil Procedure Chapter 4.01A of the Laws of Saint Lucia Revised Edition 2014 applied.

6. Although the learned judge did not have regard to the definitions of 'will' and 'deed' outlined in the Civil Code or to the Vagliano Rule, she nonetheless correctly determined that there is no legal basis within the CCP to conclude that the term 'deed' in Article 978 of the CCP includes a notarial will. Therefore, her ruling at paragraph 14 of the judgment, that it cannot be said that the 2019 will is considered a deed for the purposes of Article 978 et seq of the CCP is affirmed.

Case Name: **Caribbean Development (Antigua) Limited**

v

[1] Stuart Lockhart
[2] Geert Duizendstraal
[3] Gaye Hechme

[ANUHCVP2023/0010]
(Antigua and Barbuda)

Date: **Monday, 14th October 2024**

Coram for delivery: **The Hon. Mr. Mario Michel, Chief Justice [Ag.]**
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: **Ms. Kema Benjamin**

Respondents: **Dr. David Dorsett for the 1st respondent**
No appearance for the 2nd and 3rd respondents

Issues:

Application for an extension of time to apply for leave to appeal – Whether the delay was inordinate – Whether there are good reasons for the delay – Whether the proposed appeal has a realistic prospect of success – Whether the grant of an extension of time would cause prejudice to the respondents – Application for leave to appeal – Application for a stay of proceedings pending the determination of the appeal – Whether the appeal would be rendered nugatory if a stay is not granted – The nature of compromise agreements – Whether a compromise agreement must be in writing – Whether an order founded on breach of a compromise agreement which is not in writing is a valid order

Result / Order:

IT IS HEREBY ORDERED THAT:

1. An extension of time is granted to the applicant, Caribbean Development (Antigua) Limited, to apply for leave to appeal the decision of the learned judge dated 27th January 2023.
2. Leave is granted to the applicant to appeal the decision of the learned judge.
3. The applicant shall file and serve a notice of appeal within 21 days of the date of this order.
4. The proceedings in the court below are stayed pending the hearing and determination of the appeal.
5. There shall be no order as to costs.

Reason:

1. Applications for an extension of time to file court documents are usually determined by consideration of four factors: (i) the length of the delay in the filing of the document(s); (ii) the reasons for the delay; (iii) the chances of the appeal succeeding if the extension of time is granted; and (iv) the degree of prejudice to the respondent if the extension of time is granted and/or the degree of prejudice to the applicant if the extension is not granted. In the instant case, the applicant conceded that a delay of thirty-eight days was inordinate, and the Court adopted this concession. The applicant attributed this delay to the fact that there were two persons within the applicant company (none of them lawyers) who had charge of the litigation and they had to wait thirty-three days before they could get a copy of the written judgment so as to review it and then take advice on its merits before applying for leave to appeal it. They then waited another nineteen days to actually file the

application for leave to appeal, because both of the persons having charge of the litigation had unrelated family bereavements. Such a circumstance, wanting both in detail and credibility, is not a good enough reason to justify such a delay in seeking leave to appeal a judgment which the applicant so forcefully challenges on several legal grounds.

2. In terms of the prospect of success on the appeal, the learned judge's decision to make the orders that she did was based on the purported breach of a compromise agreement between the first respondent, on the one hand, and the applicant and the second and third respondents, on the other hand. A compromise agreement is a legally binding agreement between parties under which the parties agree to settle their potential claims in return for the payment of compensation to the party making the claim(s). Compromise agreements, or settlement agreements as they are alternatively referred to, were born in labour law, but have, over time, transitioned to other areas of contract law. There are various legal requirements for a compromise agreement to be legally binding, one of which is that the agreement must be in writing. The agreement allegedly breached in this case was not in writing. What was referred to in the court below as a compromise agreement is a handwritten memorandum apparently written and signed by the first respondent only. Additionally, the notice of admissions filed by the second respondent on 5th May 2021, and relied on by the learned judge to reach her conclusion that the applicant is bound by the compromise agreement negotiated on its behalf by the second respondent, clearly states that 'the agreement was an oral agreement'. A judgment founded on the breach of the agreement is, therefore, the product of an error of law by the judge. There must, in the circumstances, be (at least) a realistic

prospect of success of an appeal against that judgment.

Bank of Credit and Commerce International SA v Munawar Ali and others [2001] UKHL 8 considered; Beaumont Park Limited v Technology, Development & Investments Limited SKBHCVAP2020/0018 (delivered 22nd July 2024, unreported) considered.

3. The applicant's realistic prospect of success can further be grounded on its submission that the learned judge failed to give consideration to or to pay any, or any sufficient, regard to the applicant's application of 3rd June 2022 to strike out the first respondent's claim and to give summary judgment against him. There is nothing in the learned judge's oral or written order which indicates that the learned judge did give consideration to or pay any, or any sufficient, regard to the applicant's application. The obvious failure by the learned judge to deal with the applicant's application, properly or at all, also gives the applicant a realistic prospect of success on an appeal against the order of the learned judge. Accordingly, despite the admitted inordinate delay in bringing the application and the unsatisfactory reasons for the delay, the applicant's clearly good prospect of success on the appeal overrides the other factors on the basis of which a court will grant, or not grant, an extension of time to seek leave to appeal. Furthermore, as the applicant demonstrated a good prospect of success on the appeal, this was sufficient to grant leave to the applicant to appeal the decision of the learned judge.

4. On applications for a stay of proceedings, the deciding factor is whether there is clearly a good prospect of success on the appeal because, if there is, proceedings in the court below should not be continued, otherwise proceedings in the High Court and Court of Appeal in relation to a particular dispute

can be going on virtually at the same time and possibly reaching different conclusions. So, if there is clearly a good prospect of success on an appeal, an application for a stay of proceedings in the court below should be granted. If the applicant clearly does not have a good prospect of success on an appeal, then a stay of proceedings should not be granted, because a party should not be allowed to hinder the progress of proceedings in the High Court simply by filing an appeal, especially if it is one of doubtful merit. If an applicant's prospects of success on an appeal are neither clearly strong nor clearly weak, then other factors may be brought into play in the determination of an application for a stay of proceedings. The possibility that an appeal can be rendered nugatory if a stay is not granted and proceedings in the High Court are continued whilst the appeal is pending before the Court of Appeal may be a significant factor in the consideration of the court. The appeal court may also consider the degree of prejudice likely to be caused to either side in the appeal if a stay of proceedings is granted or not granted. But there is not an exhaustive list of factors which the court must consider in deciding whether to grant a stay of proceedings where the prospects of success on an appeal are neither clearly weak nor clearly strong; in the final analysis, the Court should follow where justice leads it. Since the applicant has been granted an extension of time and leave to appeal on the basis of its good prospect of success on the appeal, the proceedings in the court below are stayed pending the hearing and determination of the appeal.

C-Mobile Services Limited v Huawei Technologies Co. Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) distinguished.

Case Name:

**[1] The Roserie Company Limited
[2] Thomas Roserie
[3] Sonia Roserie
[4] Chemical Manufacturing and Investment
Company Limited**

v

**First Caribbean International Bank
(Barbados) Limited**

**[SLUHCVAP2021/0012]
(Saint Lucia)**

Date:

Wednesday, 16th October 2024

**Coram for
delivery:**

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

Appearances:

Appellants:

Ms. Cynthia Hinkson-Ouhla

Respondent:

**Ms. Alex Boland holding papers for Ms. Zinaida
McNamara-Phillip**

Issues:

**Civil Appeal – Recovery of debts – Abuse of contractual
rights – Article 956 of the Civil Code of Saint Lucia -
Whether the Bank calling in its loans was an abuse of its
contractual right with the appellants - Conflict of interest
– Whether judge failed to consider the nature of the
relations between the Comptroller of Customs and the
Bank’s Corporate Manager - Whether the judge erred in
striking out a paragraph of the witness statement of the
2nd named appellant on the basis that it raised new**

issues – Whether, in the circumstances, the relationship of banker and customer gave rise to fiduciary obligations – Whether Bank owed the appellants a duty of care – Whether guarantees were valid – Whether the 3rd named appellant's waiver was sufficient to meet the legal requirement for independent legal advice – Interest on overdraft facility – Article 1685 and 1686 of the Civil Code of Saint Lucia

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The judgment and order of the court below set out in paragraph 1 is affirmed save and except that on the second payment to Customs in the sum of \$1,597,731.28, interest will accrue on that sum at the statutory rate of 6% per annum from 4th May 2009 to date of payment.
3. Costs in the appeal to the respondent to be assessed by a judge of the Commercial Court if not agreed within 21 days of this judgment.

Reason

1. It is important for a party who wants to run a particular case to plead it so that the other party/parties can know the issues which need to be addressed in their defence and in the evidence and submissions, and the court can know what issues it is being asked to decide. The crux of grounds of appeal (i) and (ii) is the appellants' contention that the judge ought to have assessed the potential conflict of interest stemming from the relationship between the Bank's Corporate Manager and the Comptroller of Customs. These matters were not pleaded and were raised for the first time in a witness statement and in closing submissions. A departure from a pleaded case can be permitted where it is just to do so such as where the pleadings cause no prejudice, or where for some other reason it is obvious that the court, if asked, will give permission to amend the pleading, the other party may be sensible to take no pleading point. The appellants argued that the court had granted them permission to disclose specific information, including the nature of the relationship

between the Comptroller of Customs and the Bank's Corporate Manager. However, no evidence of such an order was presented, nor was this Court directed to it during oral arguments. Therefore, producing the birth certificates without explicitly pleading the allegations of conflict of interest was not permissible under rule 10.5 of the Civil Procedure Rules (Revised Edition) 2023. The judge striking out paragraph 20 of Mr. Thomas Roserie's witness statement did not prejudice the appellant's case. Furthermore, the trial judge did not err in disregarding these issues which had not been raised in the appellants' pleaded case. Grounds 1 and 2 are accordingly dismissed.

Rule 10.5 of the Civil Procedure Rules (Revised Edition) 2023 considered; *East Caribbean Flour Mills v Ormiston Ken Boyea* SVGHC VAP2006/0012 (delivered 16th July 2007, unreported) followed; *Charles Russell Speechlys LLP v Beneficial House (Birmingham) Regeneration LLP* [2021] EWHC 3458 (QB) applied; *Loveridge & Loveridge v Healey* [2004] EWCA Civ 173 applied.

2. It was not an abuse of the Bank's contractual rights in demanding payment of the loans. Under the Civil Code of Saint Lucia, good faith is presumed and legally implied throughout the contractual process, from inception to its completion. An abuse of rights may occur when the contractual right is not exercised in a reasonable manner, i.e. in accordance with the rules of equity and fair play. However, the general rule is that a demand loan is repayable on demand by the Bank. In the case at bar, the Bank reserved the right to demand the loans at any time, in all the hypothecs and the facility letter, thus, there was no question that it was within the Bank's right to call in the loans at any time, and without cause. The Bank therefore acted within its contractual right in demanding loan repayment.

Article 956 of the Civil Code of Saint Lucia applied; *Houle v Canadian National Bank* [1990] 3 SCR 122 applied; *Hall v Royal Bank of Scotland* [2009] EWHC 3163 (QB) considered; *Chemical Manufacturing and Investment Company Limited et al v First Caribbean International Bank*

(Barbados) Limited [2021] UKPC 4 followed; Cukurova Finance International Ltd and another v Alfa Telecom Turkey Ltd (Nos 3 to 5) [2016] AC 923 applied.

- 3. The relationship between banker and customer does not ordinarily give rise to a fiduciary relationship or to a trustee/beneficiary relationship. Under ordinary circumstances a bank is not a trustee or fiduciary of money deposited by a customer, but simply a debtor. There is a term implied by law in the contract between a bank and its customer that the bank must carry out the services with reasonable care and skill. The requirement to exercise reasonable care and skill only applies, and is only capable of applying, insofar as the contract gives the supplier any latitude in how the relevant services are carried out. A performance bond stood on a similar footing to a letter of credit and a bank giving such a guarantee must honour it according to its terms unless it had notice of clear fraud. Therefore, the Bank's relationship with the Roserie Company was not fiduciary in nature, negating any duty of care. Furthermore, the trial judge correctly determined that the Bank's payment of the assessments was mandatory, having no discretion regarding payment to the Customs and Excise Department upon demand, having regard to section 136(1) of the Customs and Excise Act of St. Lucia. Consequently, grounds 4 and 5 also fail.**

The Encyclopaedia of Banking Division C, The Relationship of Bank and Customer, 5A Banks as Fiduciaries, Issue 187 considered; Paget's Law of Banking Part IX, Letters of Credit and Demand Guarantees, Chapter 35, Demand Guarantees and Performance Bonds considered; Ian Hope Ross et al v Martin Dinning et al AXAHC VAP2020/0005 (delivered 30th April 2021, unreported) followed; Fahad Al Tamimi v Mohamad Khodari [2009] EWCA Civ 1042 considered; Kotonou v National Westminster Bank plc [2010] EWHC 1659 (Ch) considered; Philipp v Barclays Bank UK plc [2023]

UKSC 25 applied; Edward Owen Engineering Ltd. v. Barclays Bank International Ltd. and another [1978] Q.B. 159 considered; Bolivinter Oil SA v Chase Manhattan Bank [1984] 1 All ER 351 applied.

4. A guarantee is an agreement by which one person (the surety) agrees to answer for an existing or future liability of another (the principal) to a third party (the creditor). There are three factors which affect the validity of a guarantee which are: misrepresentation, non-disclosure and failure to explain. In relation to the failure to explain, it is for the surety to satisfy herself as to the nature and extent of the obligations she is assuming, and it is not for the creditor to explain the meaning or effect of the guarantee to her. Therefore, the fact that Mrs. Roserie was not given independent legal advice does not, without more, invalidate the guarantee.

The Encyclopaedia of Banking Barclays Division E, Securities, Guarantees 1, Contracts of guarantee, Issue, 187 considered; Bank plc v Khaira [1993] 1 FLR 343 applied.

5. In any event, the judge's ruling that Mrs. Roserie's waiver was sufficient to meet the legal requirement of independent legal advice is unassailable. The court in deciding whether a duty to obtain independent legal advice will arise, must examine the circumstances in which the documents were signed. The law gives relief to one who, without independent advice, enters into a contract upon terms that are very unfair, however the relationship must be one where there is a degree of trust and confidence. The banker and customer relationship does not fall into the category of a relationship 'of trust and confidence' or 'of ascendancy and dependency'. There is nothing in the facts that suggests that there was unconscionable conduct.

Royal Bank of Scotland plc v Etridge (No.2) [2001] UKHL 44 applied; National Commercial Bank (Jamaica) Ltd v Hew [2003] UKPC 51 followed; Bank plc v Khaira [1993] 1 FLR 343 applied.

6. Additionally, the judge did not err in her conclusion that all the guarantees were wide enough to secure the liabilities of the Roserie Company up to their respective limits and were unlimited in the case of Chemico and as a result, the guarantees were valid and enforceable as against the respective appellants. The facts of this case disclose: an uncomplicated relationship of banker and customer; that the hypothecs were executed before the appellants' notary who ought to have explained all clauses and ramifications to them; and that they were duly executed by the respective appellants. For these reasons, the judge was correct to hold that the guarantees were valid and enforceable against the respective appellants. Thus, grounds 6 and 7 of the appeal also fail.

7. In the absence of a contractual right to interest, interest is awardable pursuant to statute. The Civil Code of Saint Lucia prescribes that the rate of legal interest is fixed by law at 6% per annum. In the absence of an agreement between the Bank and the appellants, the legal rate of 6% is applicable. The Bank therefore erred in imposing a 25% interest rate on the overdrafts.

Articles 1685 and 1686 of the Civil Code of Saint Lucia applied.

APPLICATIONS AND APPEALS

Case Name:

The Bank of Nova Scotia

v

The Comptroller of Inland Revenue

**[SLUHCVAP2022/0007]
(Saint Lucia)**

Date:

Monday, 14th October 2024

Coram:

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

Appearances:

Appellant:

Mr. Barrie Attzs with Mr. Thomas Theobalds

Respondent:

Mr. George K Charlemagne

Issues:

Application for leave to appeal to the Caribbean Court of Justice - Section 108 (1)(a) of the Constitution of Saint Lucia as amended by the Constitution of Saint Lucia (Amendment) Act No. 2 of 2023 - Part 10 of the Caribbean Court of Justice Appellate Jurisdiction Rules 2024 - Appeals as of right to the CCJ - Stay of Execution - Whether the Order of the Court of Appeal dated the 24th day of May, 2024 in this matter be stayed pending the hearing and determination of this matter by the Caribbean Court of Justice

Type of order:

Oral decision

Result/Order

IT IS HEREBY ORDERED:

- 1. The applicant is granted leave to appeal the judgment of this court delivered on 24th - May 2024 in SLUHCVAP2022/0007 to the Caribbean Court of**

Justice pursuant to section 108(1)(a) of the Constitution of Saint Lucia.

- 2. The applicant is to provide security for costs pursuant to Rule 10.7 of the Caribbean Court of Justice Appellate Jurisdiction Rules (2021) in the sum of EC\$7500 within 90 days of the date of this Order.**
- 3. The applicant is to comply with the Caribbean Court of Justice Rules (2021), Rule 10.7(2) for leave to appeal.**
- 4. Upon compliance with the conditions stated herein, the Registrar of the Supreme Court shall issue a Certificate of Compliance in conformity with Form 2A Schedule 3 of the Caribbean Court of Justice Appellate Jurisdiction Rules (2021) and within 7 days of its issue serve copies of the said certificate on the intended appellant and intended respondent and shall notify the Registrar of the Caribbean Court of Justice.**
- 5. A stay of execution of the judgment of the Court of Appeal dated 24th May 2024 is hereby granted until the hearing and determination of the appeal to the Caribbean Court of Justice.**
- 6. The costs in this application shall be the costs in the appeal.**

Reason:

The Court read the notice of application filed on 5th July 2024 together with the affidavit in support filed on the same day for leave to appeal to the Caribbean Court of Justice against the judgment of this Court delivered on 24th May 2024 in SLUHCVP2022/0007. The Court read the order of this Court delivered on 24th May 2024 in the appeal.

The Court heard Counsel for the applicant Mr. Barrie Attzs. Counsel for the respondent did not object to the application.

The Court was of the view that the applicant has met the threshold for the grant of leave to appeal to the Caribbean Court of Justice pursuant to section 108(1)(a)

of the Constitution of Saint Lucia (Amendment) Act No. 2 of 2023, the Caricom Court of Justice (Agreement) Act No. 34 of 2003, the Caribbean Court of Justice (Agreement) Act (Commencement) Order and Statutory Instrument No. 85 of 2023.

The Court also considered Rule 10.7 and 10.9 (1) of the CCJ Appellate Rules 2021 and Practice Direction No. 1 of 2023 and accordingly granted leave to appeal to the CCJ with the imposition of certain conditions.

Case Name:

**[1] Emti Ltd
[2] Emad Ward
[3] Nadia Ward**

v

**Republic Bank (EC) Limited
(Qua Successor to The Bank of Nova Scotia)**

**[SLUHCMAP2023/0003]
(Saint Lucia)**

Date:

Monday, 14th October 2024

Coram:

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

Appearances:

Appellant:

Mr. Eghan Modeste

Respondent:

Ms. Sardia Cenac-Prospere with her Mr. Arthur Compass

Issues:

Commercial appeal - Articles 1603 and 1604 of the Civil Code of Saint Lucia - Hypothecation - Whether the learned judge erred in finding that the defendants had signed Personal Credit Agreements - Whether the learned judge erred in finding that the Personal Credit Agreements and hypothecary obligation were duly signed in keeping with the powers of attorney

Type of Order: N/A

Result/Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Augustin Stephen

v

**Sabrina Butcher
[SLUHCMAP2022/0007]
(Saint Lucia)**

Date: Monday, 14th October 2024

Coram: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Leslie Prospere and Ms. Joelle Greene

Issues: Commercial Appeal - Partnership agreement - Existence of a partnership - Appellant challenges trial judge's findings that: there was a partnership between the parties to carry on the business of operating a restaurant and bar in which they were joint and equal partners and agreed to split the profits equally; the parties are entitled to equally shares of the profits of the business upon the breakdown of the relationship between them; the respondent contributed to the business, which ceased operations at the onset of the COVID-19 pandemic; and on the breakdown of the parties' relationship, the appellant must return all the respondent's personal effects left at their shared residential accommodation - Evidence - Trial judge's assessment of the evidence - Whether the trial judge's assessment of the evidence was one sided, unfair and unbalanced - Whether the

following evidence was material evidence that the trial judge failed to adequately consider in coming to her conclusion that a partnership existed between the parties: the respondent's inability to definitively identify the roles of the parties in the business and the formal business structure; the lease which named the appellant as the only lessee; the Certificate of Registration of Local Restaurant and Bar which showed that the respondent alone applied for that certificate; the letter from the appellant to the respondent dated 19th August 2019 dismissing her as the manager effective immediately and alleging that she committed fraud and stealing; (5) oral evidence that there were no discussions between the parties on the issue of start-up capital for the business; the letter from the Choiseul Cooperative Credit Union Ltd dated 9th October 2020 evidencing the respondent's loan history majority of which were allocated to personal travel expenses and not contributed to the business.

Type of order:

N/A

Result/Order

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

[1] Electrical Associates Limited
[2] Marcellinus Stephen trading as MS Stephen
Tiling

v

Sunrod Property Inc.
[SLUHCMAP2024/0001]
(Saint Lucia)

Date:

Monday, 14th October 2024

Coram:

The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Appellants: Mrs. Wauneen Louis-Harris

Respondent: Ms. Vanessa Pinnock

Issues: Interlocutory Appeal - Expert Report - Rule 32 of the Civil Procedure Rules 2000 - Application to strike out the expert report on the basis that the report breached the provisions of CPR Part 32 - Whether judge erred in striking out the expert report filed by the appellants - Whether breaches were so egregious that it warranted the expert report being struck out - Whether breaches are procedural in nature and could be remedied through the Court's case management powers in CPR 26.9 - Whether judge erred in failing and or refusing to allow the appellant to amend the expert report to remedy the non-compliance of the expert report with the requirements of the CPR- Withdrawal of grounds 2 and 4

Type of Order: N/A

Result/Order: [Oral Delivery]
IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: 1st National Bank St. Lucia Limited
(Qua Successor to Royal Bank of Canada)

v

Winston Paul

[SLUHCVP2024/0011]
(Saint Lucia)

Date: Tuesday, 15th October 2024

Coram: The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal

Appearances:
Appellant: Ms. Sardia Cenac-Prospere with her Mr. Arthur Compass

Respondent: Mr. Alvin St. Clair

Issues:

Civil Appeal – Appeal against the decision of the learned judge – Construction of guarantee - Whether the learned judge erred in interpreting the guarantee and the meaning to be derived from its terms – Whether the learned judge erred in limiting the interpretation and construction of the guarantee by reference only to the loan by the 1st defendant – Contra Proferentem Rule – Whether the learned judge erred in holding that the contra proferentem rule applies when the guarantee is clear and unambiguous – Whether the learned judge erred in mischaracterizing the respondent’s obligation to pay interest on the Liabilities on demand as giving rise to compound interest – Article 1009 (1) of the Civil Code Cap. 4:01 – Whether the learned judge erred in finding that there was no special agreement to pay compound interest

Type of order:

N/A

Result/Order

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Brant Jn Marie

v

The King

[SLUMCRAP2023/0003]
(Saint Lucia)

Date:

Tuesday, 15th October 2024

Coram:

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

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

Appearances:

Appellant: Mr. Alberton Richelieu with Mr. Jeannot Michel Walters
Respondent: Ms. Kelly Thompson

Issues: Magisterial Criminal Appeal - Withdrawal of appeal

Type of Order: Oral Decision

Result/Order: IT IS HEREBY ORDERED THAT:

The appeal is withdrawn.

Reason: Counsel for the appellant indicated that he wished to withdraw the appeal.

Case Name: Allen Chastanet

v

**[1] Comptroller of Customs
[2] Paul Noel**

**[SLUHCVAP2023/0025]
(Saint Lucia)**

Date: Wednesday, 16th October 2024

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Garth Patterson, Ms. Tanya Alexis-Francis and Mr. Mark Maragh
Respondents: Mr. Anthony Astaphan SC with Mr. Seryozha Cenac

Issues: Application for leave to appeal to the Caribbean Court of Justice (CCJ) - Appeals as of right - Section 108(1)(c) of the Constitution - Final decisions - Appeals against final

decisions in civil proceedings which involve a question as to the interpretation of the Constitution - Application test - Whether in the context of section 108(1)(c), the application test must be applied to determine whether the Court of Appeal's decision is final - Jacpot Ltd v Gambling Regulatory Authority (Mauritius) [2018] UKPC 16 - Alternatively, whether the questions involved in the proposed appeal by reason of their great general or public importance or otherwise, ought to be submitted to the CCJ as they are matters that involve serious issues of law, that is, the interpretation and application of constitutional provisions contained in section 73 that have not been settled, as to the Comptroller's power to withdraw or discontinue proceedings - Section 108(2)(a) of the Constitution

Type of order:

N/A

Result/Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Flavia Cherry

v

Ezekiel Mason

**[SLUMCVAP2021/0004]
(Saint Lucia)**

Date:

Wednesday, 16th October 2024

Coram for
delivery:

**The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Eddy D. Ventose, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal**

Appearances:

Appellant:

Mr. Dexter Theodore KC

Respondent:

In Person

Issues: Magisterial Civil Appeal - Application to amend grounds of appeal - Application to adduce fresh evidence

Type of Order: Adjournment
Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar.

The Chief Registrar will inform the parties of the adjourned hearing date.

Reason: The Court noted that the respondent appeared in person and was served with the notice of hearing of the application on the previous day. The Court was of the view that the respondent was not in a position to argue the appeal himself. Counsel for the appellant agreed that the respondent would not be able to argue the legal arguments himself. The Court therefore adjourned the hearing of the matter to a date to be fixed by the Chief Registrar. The respondent was also advised that he needed legal representation in the appeal.