

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

Antigua and Barbuda
20th – 24th November 2023

JUDGMENTS

Case Name:

David McKeand

v

[1] H.E.The Governor of Montserrat
[2] The Attorney General of Montserrat
[3] The Chair, Planning and Development
Authority

[MNIHCVAP2022/0005]
(Montserrat)

Date:

Wednesday 22nd November 2023

Coram for
Delivery:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]

Appearances:

Applicant:	In person
Respondents:	No appearance

Issues:

Application for leave to appeal – Realistic prospect of
success on appeal – Whether the proposed appeal has
a realistic prospect of success for the grant of leave to
appeal

Result/Order:

IT IS HEREBY ORDERED THAT:
1. The application for leave to appeal is dismissed.

2. No order as to costs.

Reasons:

- 1. The definition of 'development' under section 15(1) falls under Part 4 of the Act, which deals with development control. Under section 12, any 'development' must have permission issued. Any person, being the owner of land, or a person having a sufficient interest in land may apply to the Authority for permission to develop that land under section 13(1). Under Part 3, section 9 allows the Authority to modify or revise the Development Plan if the consultation process outlined in section 7 is followed. On the facts, there was no application by Paradise Limited to the Authority under section 13(1). Furthermore, section 13 would not apply to a modification of the Development Plan since the Authority would be seeking its own permission and this could not have been the intention of the drafters. Thus, any decision by the GIC to approve a revision or modification of the Development Plan needs only to comply with the requirements in Part 3 (sections 7 and 9). It does not need to comply with any of the procedures outlined in Part 4, which are, in any event, inapplicable. Consequently, the judge did not err and this ground of appeal has no realistic prospect of succeeding if leave to appeal were granted.**

Parkes v Secretary of State for the Environment [1978] 1 WLR 1308 distinguished.

- 2. Under Part 4, section 20 provides that an appeal would be available to an applicant or any person aggrieved by a decision to grant or refuse development permission under section 19. Under Part 3, however, there is no provision for an appeal in respect of any revision or modification of the Development Plan under section 9. Even so, this does not prevent an applicant, or any person who has standing, from seeking leave to apply for judicial review against a decision of the GIC to revise or modify the Development Plan. The judge was therefore**

correct to accept that there was no appeal under Part 3. Moreover, the applicant was incorrect to assert that as there was no appeal under Part 3, he had no alternative remedy to challenge the exercise by the Respondents of their powers under the Act. In fact, the applicant exercised that very remedy by way of his application for leave to apply for judicial review. The trial judge therefore did not err, and this intended ground of appeal also fails to meet the threshold for the grant of leave.

3. Even if not strictly required under a statute, the reasons for a public authority's decision will be required where they are necessary to permit the courts to scrutinise the underlying decision effectively. While public authorities are not required at common law to provide reasons for administrative decisions, the Deputy Governor provided an adequate explanation of the reasons for the Redesignation Decision namely: (1) the overwhelming support by public responses to the proposed change; (2) the current and future development patterns; (3) the amenity and character of the area; (4) the heritage and environmental features of the area; (5) the housing market demand; (6) the taxation value; (7) the need for recreational space; and (8) the public opinion and comments received on the proposed changes. These reasons were essentially the same as those provided by the Chief Planning Officer as the basis for the Authority's decision in proposing the change of use reflected in the Redesignation Decision. These reasons far exceed the requirement at common law to provide adequate reasons even where they are not strictly required in the interest of fairness. The trial judge therefore did not err in holding that the reasons provided by the Deputy Governor were adequate and this intended ground of appeal also fails to pass the threshold for the grant of leave.

R (on the application of CPRE Kent) v Dover District Council and another [2017] UKSC 79 applied.

4. The trial judge carefully examined the grounds of review and the evidence of the applicant. The power granted to the Authority under section 9(1) was to review the approved Development Plan and prepare such proposals for its revision and modification as it thinks fit. The words 'as it thinks fit' show that the legislature intended to vest in the Authority the power, in its own discretion, to determine when and if any proposals are to be made. This power must be exercised on reasonable grounds. The applicant has not shown that the Authority did not have reasonable grounds for proposing the change in the use of the Land and the evidence of the Deputy Governor shows that there were reasonable grounds for making the Redesignation Decision. Accordingly, the applicant has also not met the threshold test for the grant of leave to appeal in this intended ground of appeal.

Burroughs and Another v Rampargat Katwaroo (1985) 40 WIR 287 applied.

5. In determining whether or not leave to appeal ought to be granted, the applicant must be able to demonstrate that he or she has a realistic, as opposed to fanciful prospect of succeeding on the appeal. On the facts, the intended grounds of appeal as proposed by the applicant, were nothing more than fanciful and as a result, the application for leave to appeal was dismissed.

Smith v Cosworth Casting Processes Ltd. (Practice Note) [1997] 1 WLR 1538 applied.

Case Name:

Yulia Gurieva Motlokhov

v

**[1] The Port Manager of The Port Authority
of Antigua and Barbuda**

**[2] The Director of the Antigua and Barbuda
Department of Marine Services and Merchant
Shipping**

[3] Attorney General of Antigua and Barbuda

**[ANUHCVP2023/0028]
(Antigua and Barbuda)**

Date: Wednesday 22nd November 2023

**Coram for
Delivery:** The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Robin Barclay, KC with him Dr. David Dorsett and
Ms. Leandra Smith

Respondents: Mr. Anthony Astaphan, SC with him Mrs. Carla
Brookes-Harris, Ms. Joy Dublin and Mr. Zachary
Phillips

Issues:

Interlocutory appeal – Section 3 and 9 of the
Constitution of Antigua and Barbuda – Constitutional
challenge against compulsory acquisition of property
without compensation – Appeal against judge’s
refusal to grant interim injunctive relief – Test for
injunctive relief in public law – Whether the learned
judge erred in holding that the Port Authority
(Amendment) Act was presumptively constitutional –
Whether the learned judge erred by determining that
the appellant had delayed unnecessarily in launching
her claim – Whether the learned judge erred by holding
that the appellant could not rely on any sentimental
value in the vessel – Whether the learned judge erred
in ruling that the vessel would continue to pose a risk
of environmental damage if an injunction was granted
– Presumption of constitutionality - Costs

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed and the order of the learned judge is affirmed in its entirety.
2. The counter- appeal is dismissed.
3. No order is made as to costs.

Reasons:

1. An appeal on the exercise of judicial discretion by a judge will not be allowed unless the appellate court is satisfied that in exercising his or her discretion, the judge erred in principle either by failing to take into account or by giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and that as a result of the error or degree of the error in principle, the trial judge's decision exceeded the generous ambit with which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 applied.

2. To be successful, an applicant for an interim injunction must satisfy the judge of three things. Firstly, he must present a good arguable case by demonstrating that there is a serious issue to be tried between the parties. Secondly, the court will consider whether the balance of convenience favours granting or refusing injunctive relief pending trial and, thirdly, the court must be persuaded that an award of damages to the respondent will not be an adequate remedy if the injunctive relief is granted and the respondent prevails at the substantive hearing. The same approach is taken in public law cases with the appropriate modifications necessary. It is an exceptional course for the court to restrain a public authority from enforcing an apparently valid

law. A court would take such a course where, having regard to all the circumstances of the case, the court is satisfied that the challenge to the validity of the law is *prima facie* based and adoption of such an exceptional course is justified.

American Cyanamid Co v Ethicon [1975] UKHL 1 applied; Beryl Isaac and others v Grenadian Hotel Limited GDAHCVAP2017/0002 (delivered 15th December 2017, unreported) followed.

3. A review of the principles set down in *Convoy Collateral Ltd v Broad Idea International Ltd* and *Bacci v Green* illustrates that they do not introduce revolutionary developments on the test for interim injunctive relief. Rather, they affirm as being long established and settled the principles that the statutory test under section 24(1) of the Supreme Court Act for the grant of an injunction requires that there be '(i) an interest of the claimant which merited protection and (ii) a legal or equitable principle which justified exercising the power to order the defendant to do or not do something'. The new developments highlighted in those cases, (such as the practice of granting worldwide freezing injunctions) while exemplifying the principle that injunctive relief will be deployed in an appropriate case to protect the claimant's interest if it is justifiable by some legal or equitable principle, add nothing to the long-standing underlying application of the law and practice. Essentially, the court's power to grant injunctive relief had always been linked to whether the claimant has an interest that needs protection and whether a legal or equitable principle justified granting it in the particular case. This constitutes no recent development as suggested by the appellant.

Convoy Collateral Ltd v Broad Idea International Ltd [2021] UKPC 24 considered; Bacci v Green [2022] EWCA Civ 1392 considered.

4. Bearing the abovementioned principles in mind, Mrs. Gurieva-Motlokhov had advanced a good arguable case that section 38A of the Act, in breach of section 9 of the Constitution, could be construed as compulsorily taking away without compensation any proprietary interest that she may have in the vessel or artwork onboard. The learned judge overlooked no relevant matters in arriving at this determination and took no irrelevant factors into account. In view of his evaluative assessment, on the material before him, he had adequate factual and legal bases to conclude that the issue regarding the constitutionality of section 38A, as well as the asserted proprietary interest, constituted a serious issue to be tried. Given the affidavit evidence and the learned judge's express reasons for his conclusion on the balance of convenience issue, it is clear that he had considered that the removal of the vessel was necessary to forestall further environmental damage to the harbour. As to whether the appellant could be compensated in damages for any loss of interest in the vessel and artwork, the learned judge considered that, regardless of how unique or valuable, the vessel attracted a monetary value for insurance purposes, and this would suffice if compensation had to be quantified. Further, in relation to the appellant's inaction between March 2022 and April 2023, the learned judge evidently considered that equity imposes a duty on an applicant to approach the court without delay when applying for interim relief ahead of a trial. He was entitled to take all of those factors into account in arriving at his decision. The learned judge had regard to the relevant surrounding circumstances and applicable legal principles and did not factor in irrelevant considerations. Therefore, there is no factual or legal basis to find on the application for injunctive relief that the learned judge erred in principle and had regard to irrelevant matters and, as a result, made a determination that was plainly wrong that would justify this court's interference with his decision.

5. The presumption of constitutionality has been explained as follows: ‘In some cases, it may be possible for a Court to decide from a mere perusal of an Act whether or not it was reasonably required. In other cases, the Act will not provide the answer to that question. In such cases, the proper approach is to presume, until the contrary appears or is shown, that all Acts’ passed by parliament were reasonably required.’ Arguably, a mere perusal of the impugned provisions in section 38A of the Act would be inadequate to determine whether the Port Manager’s or Director’s conduct was legally invalidated for unconstitutionality. Indeed, the issue of the appellant’s avowed propriety interest in the vessel and artwork had not yet been decided and the respondents had not deployed their response to the claim. It would not have been apparent which, if any of the provisions under section 9 of the Constitution they might seek to invoke in defence of the charge of unconstitutionality relative to his conduct. Accordingly, the learned judge was entitled to apply the presumption of constitutionality to section 38A of the Act. He did not thereby err in law or in principle and as a result made a determination that is blatantly wrong that would merit reversal by this Court.

AG v Antigua Times [1975] UKPC 15 applied.

Case Name:

Andy Quashie

v

The King

[SVGHCRA2019/0011]

(Saint Vincent and the Grenadines)

Date:

Thursday 23rd November 2023

**Coram for
Delivery:**

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Appellant: Mr. Jomo Thomas and Mr. Noel Bruce

Respondent: Mrs. Maria Jackson-Richards

Issues:

**Criminal appeal – Appeal against conviction –
Evidence – Hearsay – Whether the judge allowed
prejudicial hearsay evidence making the trial
manifestly unfair to the appellant – Summing-up –
Turnbull Direction – Whether the judge erred in law by
initially refusing and then failing to give an adequate
Turnbull Direction – Corroboration warning – Whether
the judge erred in law by failing to give an accomplice
direction**

Result/Order:

IT IS HEREBY ORDERED THAT:

**The appeal is dismissed and the appellant's
conviction is upheld.**

Reasons:

- 1. Evidence is hearsay if it is a statement made by
a person at a time other than when giving
evidence in the subject court proceedings, and
the object of the evidence is to establish the
truth of what is asserted. Foye's statement,
Quashie's statement and Bailey's statement
amounted to inadmissible hearsay evidence
because they were all statements made out of
court and were intended to be acted on as true.
Foye's statement carried a prejudicial
connotation that the appellant was a person
engaged in a certain lifestyle which the absent
witness was exhorting him to be done with.
Quashie's statement painted the appellant in the
light of a habitual tormentor of the deceased.
Bailey's statement was asserted to prove that
the appellant was the person who shot and**

killed the deceased. The appellant's statement, however, is not hearsay as it was given during his examination in chief where he described his own actions when he learnt that the police was looking for him.

Subramaniam v Public Prosecutor [1956] 1 WLR 965 followed; DPP v Christie [1914] AC 545 considered.

2. The evidence which the Court has found to be inadmissible hearsay evidence by itself, is not sufficient to render the conviction unsafe, and this is a point which the appellant's counsel conceded.
3. In directing the jury on the issue of identification, the judge's directions must comply with the sense and spirit of the guidance in *R v Turnbull*, without necessarily reciting the guidelines in that case as a mantra. The judge in the present case would have initially asked counsel whether an identification direction was needed, and upon hearing counsel's response, promptly launched into the directions. He first warned the jury of the need for special care in reliance on the identification evidence. He then directed the jury on the following circumstances: the length of time the appellant was under observation; the distance at which the observation was made; the lighting conditions; whether the observation was impeded; and whether the witness knew the appellant. Thereafter the judge cross-referenced the appellant's confirmatory evidence of this issue. As economical as the directions appeared, they complied with the *Turnbull* guidelines.

***R v Turnbull* [1976] 3 All ER 549 followed; *Mills et al v R* [1995] 1 WLR 511 followed.**

4. The part of the summation which refers to "one or four or more identifications" is most likely an error in transcription. Firstly, the phrase makes little sense linguistically. Secondly, nowhere in

the judge's rehearsal of the evidence in his summation did he refer to other witnesses who claimed to have seen the appellant shoot the deceased. Lastly, the judge's directions on identification, were confined to Spring's evidence.

5. Historically, where an accomplice was called as a prosecution witness, the judge was required to give a corroboration warning, failing which, the conviction must be quashed. In England, this requirement was abolished with the passage of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") which made the corroboration warning a matter of the judge's discretion. The manner in which a judge should exercise that discretion was set out in *R v Makanjuola*; *R v Easton*. Even though Saint Vincent and the Grenadines does not have a statutory counterpart to the 1994 Act, the Privy Council has held that since the requirement to give a corroboration warning was merely a rule of practice relating to the way the judge should direct the jury, the principles enunciated in *Makanjuola* should be followed.

R v Makanjuola; *R v Easton* [1995] 1 WLR 1348 followed; *R v Gilbert* [2002] 2 AC 531 followed.

6. The relevant questions to be answered are firstly, whether Foye was an accomplice and, secondly, if so, whether the judge wrongly exercised his discretion to not give a corroboration warning. The evidence shows that Foye attended the scene after hearing gunshots and saw the appellant and Adams both armed while the deceased dragged himself along the ground. With that knowledge, he took possession of Adams' gun and proceeded to his home with it. This could arguably be interpreted as an attempt to dispose of, or at least conceal, a weapon that may have been of evidential relevance in the investigation of the murder. This could be interpreted as an act of intentional assistance on his part, and, at the very least, Foye was an accomplice after the fact. In

answering the second question, it must first be noted that the Court does not lightly interfere with the trial judge's exercise of discretion. Considering that the respondent's case did not solely depend on Foye's evidence; that there was strong identification evidence from Spring, and there was no suggestion that Foye was unreliable, deceitful or that he held a grudge against the appellant, there is no justification for saying that the judge wrongly exercised his discretion in not giving a corroboration warning.

Dufour and others v Helenair Corporation Limited and others (1996) 52 WIR 188 followed; Davies v Director of Public Prosecutions [1954] 1 All ER 507 followed; R v Makanjuola; R v Easton [1995] 1 WLR 1348 followed.

APPLICATIONS AND APPEALS

Case Name:

**[1] Akeem Benjamin
[2] Mark Mansoor
[3] Martin Mansoor**

v

**[1] Novella Phillip
[2] Wayne Phillip**

**[ANUHCVP2023/0014]
(Antigua and Barbuda)**

Date:

Monday, 20th November 2023

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Applicants:

Ms. C. Debra Burnette

Respondents: Mr. George Lake

Issues: Application to vary order of single judge - Consent order

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED BY CONSENT THAT:

1. The Order made by His Lordship Justice of Appeal, the Honourable Gerard St. C. Farara on 27th June 2023 is hereby varied to permit the Appellants to serve the Amended Notice of Appeal, Application for a Stay of Execution, Affidavit in Support of Application for a Stay of Execution, Authorization Codes, Written Submissions and Order dated 27th June 2023 on the Respondents personally.
2. The personal service effected on the Respondents on 13th July 2023 is deemed to be proper service of the Amended Notice of Appeal, Application for Stay of Execution, Affidavit in Support of Application for a Stay of Execution, Authorization Codes, Written Submissions and Order dated 27th June 2023.

Reason: The Court noted the Consent Order filed on 11th September 2023 signed by counsel for both parties. Upon the application made on 15th August 2023 and upon reading the said application and the affidavit in support sworn by Mrs. Nicole Nesbitt-Henry and filed on 15th August 2023, the Court granted the application to vary the Order made on 27th June 2023 with the consent of both parties.

Case Name: Caribbean Development (Antigua) Limited

v

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

**[ANUHC VAP2023/0010]
(Antigua and Barbuda)**

Date: Monday, 20th November 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Applicant: Mr. Hugh Marshall

Respondents: Mr. Andrew Young and Dr. David Dorsett for the 1st respondent

Issues: Application for an extension of time for leave to appeal - Whether the delay is inordinate - Whether there are good reasons for the delay - Whether the proposed appeal has a realistic prospect of success - Application for leave to appeal - Judgment in the court below reached on admissions of the 2nd and 3rd respondents - Whether the judge gave case management findings rather than a judgment on the issue of the applicant's strike out application - Whether the judge erred in considering the admissions of the 2nd and 3rd respondents as evidence against the applicant on the basis that they had filed a joint defence and that it amounted to the applicant not having any real prospect of success - Breach of compromise agreement - Whether the 1st respondent was entitled to enter into a compromise agreement with the applicant - Whether the compromise agreement had been perfected - Whether the 1st respondent did not properly plead the existence of the agreement and therefore it was not open to the learned judge to give judgment on such a claim - Application for a stay of proceedings pending determination of the appeal - Whether the appeal would be rendered nugatory if a stay is not granted

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: Lester Jonas

V

Jumby Bay Island Company

**[ANUHLTAP2019/0002]
(Antigua and Barbuda)**

Date: Monday, 20th November 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellant: Mr. Kendrickson Kentish

Respondent: Ms. Nelleen Rogers Murdoch

Issues: Civil appeal - Unfair dismissal - Quantum of damages - Whether the Industrial Court erred in declining to award compensation for the manner of dismissal, future loss of earnings, holiday pay and the adjustments in salary - Whether the manner of dismissal of the appellant made him disadvantaged on the labour market - Whether the Industrial Court erred in failing to take into account the distinguishing factor of the prejudicial statements made in the letter of dismissal - Section C27 of the Labour Code - Whether the appellant was entitled to overtime pay - Whether the respondent unlawfully deprived the appellant of

his opportunity to earn overtime pay - Whether the appellant's compensation should be adjusted to account for the restructuring of his salary and the reduction in his basic pay

Type of Order: N/A

Result / Order:
IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: **Tejah Armstrong**
v
The King

[ANUHCRA2023/0008]
(Antigua and Barbuda)

Date: **Tuesday 21st November 2023**

Coram: **The Hon. Mde. Gertel Thom, Justice of Appeal**
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]

Appearances:
Appellant: **Mr. Wendel Alexander**
Respondent: **Mrs. Shannon Jones-Gittens**

Issues: **Criminal appeal – Appeal against conviction and sentence - Whether the appellant's conviction was safe - Whether the learned judge adequately directed the jury in relation to the identification evidence - Whether the learned judge properly directed the jury**

on the issue of the cell confessions - Whether the learned judge properly directed the jury in relation to the appellant's defence of alibi

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellant's appeal against conviction and sentence is allowed.**
- 2. The conviction is quashed and the sentence set aside.**

Reason:

The appellant, Tejah Armstrong, was convicted of shooting with intent to murder and aggravated robbery. He was sentenced to 28 years imprisonment on the count of shooting with intent to murder and 15 years in relation to the offence of aggravated robbery. He appealed against both his conviction and sentence, citing a total of 23 grounds of appeal. The Court was of the view that those grounds raised three main issues to be decided: (i) whether the learned judge adequately directed the jury in relation to the identification evidence; (ii) whether the learned judge properly directed the jury in relation to the cell confessions; and (iii) whether the learned judge properly directed the jury in relation to the appellant's defence of alibi.

The Court reviewed the record, the summation of the learned judge, the submissions made by learned counsel, Mr. Alexander, for the appellant and the learned DPP, Mrs. Shannon Jones-Gittens, and was of the view that there were several misdirections on all three of the main issues. The Court also found that the learned judge did not put the appellant's defence of alibi adequately to the jury and all of these misdirections affected the safety of the appellant's conviction.

For these reasons, the Court was of the view that the

appellant's conviction should be quashed, the appeal allowed and the sentence set aside.

Case Name:

Kier Construction Limited

v

[1] Sundry Workers

[2] George Tavernier (trading as Tavernier Construction)

**[ANUHCVP2022/0009]
(Antigua and Barbuda)**

Date:

Tuesday 21st November 2023

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal**

Appearances:

Appellant:

Ms. Safiya Roberts and Ms. Kamilah Roberts

Respondents:

**Mr. Cosbert Cumberbatch for the 1st respondent
Mr. Kendrickson Kentish for the 2nd respondent**

Issues:

Civil appeal - Unfair dismissal - Employer/Employee relationship - Whether the court erred in finding that the employer/employee relationship existed between the appellant and the respondents - Whether court misinterpreted the contractual relationship between appellant and 2nd respondent - Whether the court erred in its interpretation of the effect of Article 8.1 of the subcontractor agreements between the 2nd respondent and the appellant - Whether there was no legal basis for placing paramountcy on Article 8.1 particularly when taking into account the court's reasons for doing so - Whether the court erred by failing to take into account the effect of the express terms of the subcontractor agreements between the

2nd respondent and the appellant - Whether the court erred in that it misapplied the relevant test to the evidence that it had before it - Whether the court failed to take into account the evidence surrounding the appellant's payment of the sum of \$5,242,964.33 under the July 2007 agreement - Whether the court erred by failing to provide reasons for its determinations in applying the relevant tests (particularly the "control test", "organization/integration test", the "economic reality test" and "the mutuality of obligations test") and failed to point towards the evidence that was taken into account in such determinations

Type of Order: N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: **Greater Sail Limited**

v

Iszo Capital LP

[BVIHCMAP2023/0020]
(Territory of the Virgin Islands)

Date: **Wednesday 22nd November 2023**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]

Appearances:

Applicant: **Mr. John Carrington, KC with him Mr. Andrew Emery**

Respondent: **No appearance**

Issues: Application for leave to appeal - Costs assessment order - Whether the judge wrongly applied the decision of Justice Small Davis in Suit BVIHC (Com) 2020/0165 in relation to the principles applicable in assessing costs - Whether the judge failed to perform the elementary exercise in assessing costs to determine whether they are proportionate, reasonably incurred and reasonable - Whether the proposed appeal has a realistic prospect of success

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application for leave to appeal the costs assessment decision made on 14th September 2023 is granted.

Reason: Upon considering the oral arguments of counsel for the applicant, the Court was satisfied that the threshold for leave to appeal had been met.

Case Name: Calvin Ayre

v

Reuters News & Media Inc.

[ANUHC VAP2023/0029]
(Antigua and Barbuda)

Date: Wednesday 22nd November 2023

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. David Joseph, KC with him Dr. L. Errol Cort and Ms. Claneisha Gomes

Respondent: Mr. John Carrington, KC with him Ms. Cheryl-Lee Bolton

Issues:

Interlocutory appeal - Civil Procedure Rules 2000 - Personal service - Eastern Caribbean Supreme Court (Electronic Litigation Filing and Service Procedure) Rules 2019 (“ELP Rules”) - Whether the learned master erred in interpreting rule 13 of the ELP Rules as being applicable to a party effecting personal service of a document by non-electronic means and to a party who has been ordered to effect personal service by post and by hand - Whether service by electronic means is required when there is an order for personal service or service by specified method - Whether the learned master erred in concluding that the failure to serve the authorisation code along with the claim form and other documents for service within the twelve month period in respect of a claim form served out of the jurisdiction rendered the claim form invalid - Whether the learned master erred in overturning the order for substitution of a party and service out which was made by a master of concurrent jurisdiction - Part 19 of the Civil Procedure Rules 2000 - Whether the learned master’s order in effect revived the provisions in respect of the validity of the claim form for service – Whether the invalidity of the claim form can be waived – Whether Reuters US submitted to the jurisdiction of this Court – Whether the learned master erred in failing to give weight to the service of the claim form without the authorisation code on Reuters UK or the service of the expired claim form on Reuters US

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: [1] Attorney General of Antigua and Barbuda
[2] David Matthias

v

HMB Holdings Ltd.

**[ANUHCVAP2021/0021]
(Antigua and Barbuda)**

Date: Thursday 23rd November 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal

Appearances:

Appellants: Mr. Anthony Astaphan SC, Mrs. Carla Brookes-Harris, Mrs. Cherissa Roberts Thomas, Dr. David Dorsett, Ms. Chadera Codrington and Mr. Deshaun Browne

Respondent: Mr. Larry Smith, KC with him Mr. Kendrickson Kentish and Ms. Alketz Joseph

Issues: Interlocutory appeal - Undertaking - Breach by appellants of undertaking given to Court not to dispose of shares in certain companies pending appellate determination - Whether the learned judge erred in imposing the fine of EC\$869,890.54 on the appellants as a sanction for breach of the undertaking - Dismissal by trial judge of appellants' amended application to discharge and replace the undertaking in the terms stated - Relation Back Doctrine - Whether the learned judge erred in finding that the relation back doctrine did not preserve the priority of the hearing of the appellants' application as amended - Whether the learned judge failed to properly consider the appellants' amended application

Type of Order: N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**[1] Notre Dame Investments Limited
[2] Angela Diala List**

v

**[1] Rowntry Trading Limited
[2] Paul List
[3] BCM International Limited**

**[NEVHCVAP2022/0009]
(Saint Christopher and Nevis)**

Date:

Thursday 23rd November 2023

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal**

Appearances:

Appellants: Mr. Delano Bart, KC with him Mr. Errol Williams

Respondents: Ms. Jean Dyer

Issues:

Application to oppose the filing of submissions by the respondents - Whether the submissions filed by the respondents were filed out of time - Whether the Court can rectify the late filing of the submissions pursuant to CPR 26.9 - Interlocutory appeal - Whether the learned judge erred in continuously referring to the relief sought by the appellants as a final injunction as opposed to an interim injunction which attracted different legal considerations - Whether the learned judge erred in failing to grant the interim injunction on the basis that the language proposed by the

appellants, “unfairly prejudicial”, fell outside of sufficient degree of precision - Whether the learned judge erred in failing to state in his reasons whether he accepted that there was a serious question to be tried, which was the first leg of the American Cyanamid test – Whether the learned judge erred in determining that damages would be an appropriate remedy to compensate the appellants - Whether the learned judge erred in determining that the balance of convenience lay in favor of maintaining the status quo, without explaining what the status quo was - Whether the learned judge erred in stating that it was not clear to the court that the second appellant was obviously entitled to this relief, that is to say, that she was a director in the 3rd respondent, notwithstanding the evidence to the contrary - Whether the learned judge erred in failing to deal with the issue of Michael Cooke’s appointment as a director of the 3rd respondent, which was a central question for determination and where the appellants had raised sufficient doubt as to his appointment - Whether the learned judge erred in failing to address the question of Jonathan Adongo’s removal as secretary - Whether the learned judge erred in failing to discharge his duties in giving reasons or any adequate reasons for his decision contrary to the legal test as enunciated in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Redcliffe Holdings Limited

v

[1] Edward Meyer

**[2] Kathleen Meyer
[3] William Cooper**

**[ANUHCVP2023/0018]
(Antigua and Barbuda)**

Date: Friday 24th November 2023

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Wesley George and Ms. Jacqueline Walwyn

Respondents: Dr. David Dorsett for the 1st and 2nd respondents
Ms. E. Ann Henry, KC for the 3rd respondent

Issues: Interlocutory appeal - Appeal against order for security for costs - Whether the learned master erred in finding that the appellant ought to pay security for costs for the respondents - Whether the learned master erred in finding that the appellant was impecunious - Whether the learned master erred in not making a finding that the appellant had shown a high degree of probability of success - Whether the learned master failed to consider all the relevant factors in *Keary Developments Ltd v Tarmac Construction Ltd* [1995] 3 All ER 534

Type of Order: N/A

Result / Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.