

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA

6th – 10th March 2023

JUDGMENTS

Case Name:

The Planning and Development Authority

v

Grenada Land Actors Inc

Hartman Group Limited

v

[1] Grenada Land Actors Inc

[2] Planning and Development Authority

[3] Singapore Heng Sheng Grenada Pte Ltd

[4] Range Developments (Grenada) Ltd

Range Developments (Grenada) Ltd

v

[1] Grenada Land Actors Inc

[2] Planning and Development Authority

[3] Singapore Heng Sheng Grenada Pte Ltd

[4] Hartman Group Limited

[GDAHCVAP2022/0008]

[GDAHCVAP2022/0009]

[GDAHCVAP2022/0010]

(Grenada)

Date:

Wednesday, 8th March 2023

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Gerard St. C. Farara, Justice of Appeal

[Ag.]

Appearances:

Appellants: Ms. Caryn Adams for the Planning and Development Authority
Mr. Darshan Ramdhani KC for Range Developments (Grenada) Ltd
Ms. Sheila Harris and Donnika Maxwell holding papers for Mr. John Carrington KC for Singapore Heng Sheng Grenada Pte
Ms. Daniella Williams Mitchell holding papers for Mr. Michael Hylton KC for Hartman Group Limited

Respondents: Professor Leslie Thomas KC with him Ms. Rita Joseph Olivetti for Grenada Land Actors Inc

Issues:

Interlocutory appeal - Judicial review - Strike out - Locus standi - Delay - Whether the learned judge erred in ruling that in a meritorious claim issues of standing and unreasonable delay can only be considered at either the leave stage or substantive hearing of the claim - Whether the learned judge erred in that he failed to consider whether the case before him was a simple one in which the respondent clearly had no sufficient interest in the subject matter of the claim - Whether the Court of Appeal should consider and determine afresh the issues of standing and delay

Result/Order:

IT IS HEREBY ORDERED THAT:

The appeals are dismissed and the order of the learned judge is affirmed with costs to the respondent to be assessed by a judge of the High Court if not agreed within 21 days.

Reasons:

1. The learned judge did not rule that he only has the power to consider the issue of standing and unreasonable delay at only two stages of the proceedings, being the leave stage and the substantive hearing stage. The issue of standing can be best viewed in the round at the substantive hearing as the strength of the

applicant's interest is one of the factors to be weighed in the balance at the substantive hearing. There may well be other factors which properly affect the court's evaluation of whether an applicant has a sufficient interest to maintain the challenge or secure a remedy. Therefore, save in simple or clear cases, the question of standing will not be determined as a preliminary issue independent of a full consideration of the merits of the complaint.

Judicial Review Handbook Michael Fordham QC (5th Edn, Oxford-Portland Oregon, 2008), para. 38.3 considered; Halsbury's Laws of England Judicial Review (vol. 61A, para. 57) considered; R v Somerset County Council ex parte Dixon [1998] Env LR 111 considered.

2. The case cannot be described as a simple or clear case in which the respondent lacks standing because whether the respondent had standing is dependent on whether they had the necessary expertise which was a fact sensitive issue. The learned judge, in determining that this fact-sensitive exercise along with the issue of delay would best be conducted at the substantive hearing, was exercising his case management powers. There is no discernible error in the manner in which the learned judge exercised his discretion. There is, therefore, no legal basis to interfere with the exercise of his discretion.

Broughton v Kop Football (Cayman) Limited and Others [2012] EWCA Civ 1743 considered; Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Ltd [1981] 2 All ER 93 considered; Regina v Secretary of State for Foreign and Commonwealth Affairs, Ex parte World Development Movement Ltd [1995] 1 WLR 386 considered.

Case Name:

The King

v

[1] Yan Edwards

[2] Allen Baptiste

[BVIHCRAP2020/0002]

(Territory of the Virgin Islands)

Date:

Friday, 10th March 2023

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Gerard St. C. Farara, Justice of Appeal

[Ag.]

Appearances:

Appellant:

Mrs. Kellee-Gai Smith

Respondents:

Mr. Sherfield Bowen for the first respondent

Mr. Israel Bruce for the second respondent

Issues:

Criminal appeal – Disclosure – Duty to disclose – Justice Protection Program – Section 23 of Justice Protection Act No. 18 of 2011 - Whether disclosure of the information ordered by the learned judge was permissible at common law or pursuant to the Justice Protection Act

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed and the order for the stay of execution is discharged.**
- 2. The court takes judicial notice of the fact that the learned judge who granted the stay is unable to continue the trial. The court therefore orders that, the trial commence de novo before another judge.**

Reasons:

- 1. At common law, the prosecution has a duty to**

disclose to the defense all relevant material. This duty at common law is also outlined in section 23(2) of the Justice Protection Act. However, where the material held by the prosecution, tending to undermine the prosecution or assist the defense, or creates a risk of prejudice to important public interest, and/or negatively impacts the fairness of the trial, a judge may grant a non-disclosure order to prevent the information from being disclosed fully or even at all. The judge is required to balance the need to preserve the public interest in non-disclosure against the interest of justice and fairness. Where there is a potential for miscarriage of justice if there was non-disclosure, then an order for disclosure should be made. Additionally, where disclosure is necessary to establish the innocence of the accused then it would be allowed.

R v Ward [1993] 2 ALL ER 577 applied; R v Davis [1993] 1 WLR 613 applied; R v H and others [2004] UKHL 3 applied.

2. In this case, the public interest immunity identified was very general. It was based on the fact that the witnesses were part of the Justice Protection Program, and it was therefore not in the interest of the public that the information sought be disclosed. The Crown in its submissions failed to identify any evidence and indeed none could be detected, how disclosure of the information sought would affect the safety of the witnesses, or in any way compromise any aspect of the Justice Protection Program. Further, the court by its order, had not yet determined whether to make an order for full disclosure or disclosure in a redacted or anonymised form to the respondents. There is therefore no merit in the Crown's submission that the learned judge erred in the application of the common law principles applicable to public interest immunity.

3. The Justice Protection Act makes provision for, among other things, the establishment of a program which provides protection and assistance to certain witnesses and persons related to them in criminal and civil proceedings. The program is administered by the Justice Protection Agency and the Administrative Centre which are established under the Justice Protection Act. For a person to be admitted as a participant of the Protection Program, he/she is required to provide the personal information in accordance with section 7 of the Act and to sign a memorandum of understanding in the terms set out in schedule 3(3) of the Justice Protection Act. Under the Justice Protection Act, the Administrative Centre is also given very wide discretion to include in the memorandum of understanding matters that it considers necessary in addition to the matters outlined in schedule 3. However, the Act does not expressly require disclosure to the Administrative Centre of any amnesty or pardon or any arrangement between the Director of Public Prosecutions' Office, the Attorney General or Police and the participant. Further, the record of the proceedings below does not show that there was any evidence before the learned judge that the documents sought to be disclosed were included in the memorandum of understanding signed by the witnesses, nor did counsel for the Crown at the hearing or in her written submissions refer the court to any evidence which so indicates.

Sections 7 (2), 8 (c), 11 (1)-(4), 23 (1)-(4) and Schedule 3 (3) of the Justice Protection Act No. 18 of 2011, Laws of the Territory of the Virgin Islands applied.

4. Section 23 (1) prohibits orders for disclosure to officers of the Administrative Centre and its agencies to produce or disclose information received pursuant to the Act. This includes all information disclosed in and or related to the memorandum of understanding. Section 23 (1)

of the Act does not offer protection against disclosure of matters which could be included in the memorandum of understanding but are not so included. Rather, the Act provides protection for disclosure of matters that are disclosed in the memorandum of understanding. In this case, no evidence was adduced that any arrangement relating to amnesty or pardon between the witnesses and the DPP and or the Attorney General was at any time disclosed to the Administrative Centre or any of its agencies. The Crown did not lead evidence showing that the documents requested were disclosed or produced to the Centre or its agencies for the purposes of the Act.

Sections 23(1) and (2) the Justice Protection Act No. 18 of 2011, Laws of the Territory of the Virgin Islands applied.

5. Section 23(2)(b) provides an exception when disclosure could be made of otherwise prohibited information. The subsection provides two conditions which must be satisfied. Unless both are satisfied the court cannot order disclosure of information to which 23(1) applies. While the learned judge made a specific finding that disclosure was necessary in the interest of justice, the learned judge did not make any finding on the second limb of the subsection on whether disclosure was likely to adversely affect the intent and purposes of the Act. However, w the learned judge considered the provisions of the Act, he specifically stated that his order for disclosure was not made pursuant to the Act but rather the common law. The order was not prohibited at common law or pursuant to section 23 of the Act. There is therefore no basis on which this Court could find that the learned judge erred in making the disclosure information order.

Sections 23(1) and (2)(b) the Justice Protection Act No. 18 of 2011, Laws of the Territory of the

Virgin Islands applied.

Case Name:

The Attorney General

v

**[1] Neil Cave
[2] Simon Butler
[3] Jude Jolie
[4] Darren Weste
[5] Linda Da Costa
[6] Kevin Simon
[7] Desroy Demming
[8] St. Rose Verneuil
[9] Richard Jumi
[10] Joseph Nixon**

**[ANUHCVAP2022/0011]
(Antigua and Barbuda)**

Date:

Friday, 10th March 2023

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mrs. Carla Brookes-Harris

Respondents:

**Ms. Luann De Costa being led by Mr. Ruggles
Ferguson**

Issues:

**Civil appeal – Company law – Companies
Amendment Act 2020 – Section 564(1)(a) of the
Companies Act 1995 – Automatic stay - Whether the
learned judge misconstrued the Act when she held
that the automatic stay imposed by section 564(1)(a)
of the Act was unconstitutional – Whether automatic
stay infringed on the doctrine of separation of
powers Section 15(8) of Constitution of the Antigua
and Barbuda Constitution Cap 23 Order 1981-**

Whether automatic stay unduly restricted the right to access the court

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The order of the learned judge is set aside.**
- 3. The respondents shall pay the appellants' costs on this appeal, such costs to be assessed by the court below at no more than two-thirds of the costs awarded in the court below.**

Reasons:

- 1. Automatic stays created by Parliament are not by virtue of their nature, de facto unconstitutional. To determine the constitutionality of an automatic stay, such as the automatic stay prescribed by section 564(1)(a) of the Act, the court must look at the nature of the automatic stay – the permanence or indefiniteness of the stay and/ or whether it removes judicial oversight from the hands of the court. In this case, section 564(1)(a) of the Act does not remove judicial oversight from the hands of the court as the court is empowered to hear an application for relief from the automatic stay pursuant to section 564(4) of the Act and make a determination as to whether the criteria thereunder has been satisfied. Further by virtue of section 564(5) of the Act, 30 days after the request for relief under section 564(4) is made, the automatic stay would be terminated unless the court, after notice and hearing, orders that the stay remain in effect. When reading the entirety of section 564, it is clear that the automatic stay does not oust the court from providing relief. The learned judge therefore erred in her determination that section 564(1)(a) is unconstitutional as it infringes the doctrine of separation of powers doctrine.**

Section 564(1)(a) of the Companies Amendment Act, 2020 Act No. 17 of 2020 Laws of Antigua and Barbuda applied; Hinds and others v The Queen [1976] 1 All ER 353 applied; Cerise Jacobs v Minister of Tourism ANUHCVAP2019/0011 (delivered 24th May 2022, unreported) applied; The Superintendent of Prisons and another v Hamilton [2016] UKPC 23 applied; Ritzen Grp., Inc. v Jackson Masonry, LLC 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020) considered; Stone Street Capital Limited v The Attorney General of Trinidad and Tobago CV 2012 – 04383 distinguished; Nicholas v The Queen 193 CLR 173 applied; Bourne and others v Charit-Email Technology Partnership LLP (in liquidation) [2009] EWHC 1901 (Ch) applied.

- 2. Section 15(8) of the Constitution of Antigua and Barbuda provides the right to access to the court. This right to access is not absolute. However, if a person seeks to challenge undue restrictions on their right to access, the court must engage the test of justifiability to determine whether the right has been infringed. The test of justifiability requires the court to ask itself: whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective.**

Section 15(8) of the Constitution of Antigua and Barbuda Cap 23 Order 1981 applied; De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69 applied; Re Alpha Natural Res. Inc 544 B.R. 848, 855 (Bankr. E.D. Va. 2016) considered; Ritzen Grp., Inc. v Jackson Masonry, LLC considered 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020) considered; Stone Street Capital Limited v The Attorney General of Trinidad and Tobago CV 2012 – 04383

distinguished.

3. In this case, while the imposition of a temporary automatic stay to maintain the status quo of a company significant to the economic well-being of Antigua and Barbuda would be sufficiently important to justify limiting the right to access to the court, the respondents' right of access to the court is not impaired and the respondents may at any time under section 564(4) of the Act apply for relief from the automatic stay or under section 568(1) of the Act file a proof of claim or interest. The learned judge therefore erred in her determination that the respondents had their right to access the court unduly restricted by the imposition of the automatic stay and she erred in finding that the court's adjudicatory power was usurped by Parliament. Section 564(1)(a) of the Companies Amendment Act 2020 is constitutional and does not unduly restrict the right to access the court.

APPLICATIONS AND APPEALS

Case Name:

Oscar Vargas

v

[1] Barbara Vargas (nee Pierre)
[2] CIBC First Caribbean International Bank
(Barbados) Limited
[3] Caribbean Union Bank

[ANUHCVP2020/0034]
(Antigua and Barbuda)

Date:

Monday, 6th March 2023

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicants/Respondents:	The applicant/first respondent in person Ms. Mandi A. Thomas for the second respondent
Respondent/Appellant:	Mr. Hugh Marshall

Issues:

Application to strike out appeal - Application for adjournment

Type of Order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The adjournment is granted at the request of the applicant to allow for the filing of documents and orders relevant to the application made by the applicant to strike out the notice of appeal, the said documents and orders to be filed by Wednesday, 8th March 2023.**
- 2. A notice of further hearing shall be fixed by the Chief Registrar.**

Reason:

The Court noted that several documents and orders cited by the applicant, Ms. Barbara Vargas, in her application to strike out the notice of appeal were not before the Court. The Court, being unable to determine the application without having sight of these documents, granted the applicant's application for an adjournment to file them.

Case Name:

[1] Deidre Pigott Edgecombe
[2] Nordel Edgecombe

v

Antigua Flight Training Centre

**[ANUHC VAP2022/0026]
(Antigua and Barbuda)**

Date: Monday, 6th March 2023

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicants:	Dr. David Dorsett
Respondent:	No appearance

Issues: Application for leave to appeal – ex parte - Whether the intended appeal has a realistic prospect of success - Statutory illegality - Whether the learned judge erred in not setting aside the default judgment having found that it was arguable that the contract that was the foundation of the claim was tainted with illegality - Whether the learned judge erred in concluding that the applicants’ contention that the respondent was the operator of an uncertified Aviation Training Organisation was at best a merely arguable defence and not a knockout point as alleged

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal against the decision of the learned judge is dismissed.
2. The applicants are not allowed to make any further applications regarding the 2014 default judgment to this Court or to the court below

without the leave of this Court being first obtained. If notice of any such application shall be given without such leave being obtained, the respondent shall not be required to appear upon such application and it shall be dismissed without being heard.

Reason:

This was an application by the applicants for leave to appeal against the decision of the learned trial judge dismissing the applicants' application to set aside the default judgment entered against them in 2014.

The Court considered the application and the evidence in support, the submissions of counsel and the judgment of the learned judge. They also heard detailed oral submissions from counsel that leave to appeal should be granted. To succeed, the applicants would have to show that there are exceptional circumstances why the default judgment should be set aside. In short, the applicants must have what has now been described in the cases as a "knockout point".

The Court was satisfied that the applicants did not have a knockout point and that there were no exceptional circumstances in the application. The alleged illegality affecting the contract under which the claim was made creates merely an arguable defence and this was found by the learned judge. The learned judge also found that there was inordinate delay in making what is now the fourth attempt by the applicants to set aside the 2014 default judgment and that there was no good reason for the delay.

Accordingly, the Court dismissed the application for leave to appeal against the judgment of the learned judge.

The Court also thought it proper, this having been the fourth attempt by the applicants to set aside the default judgment that was entered in 2014, to make an order that there be no further applications to set aside the default judgment without the permission of this Court. This is an order coming from the case of

Grepe v Loam (1887) 37 Ch D 168.

Case Name:

Gerald Barnes

v

CIBC First Caribbean International Bank

**[ANUHCVAP2020/0002]
(Antigua and Barbuda)**

Date:

Monday, 6th March 2023

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Justin L. Simon, KC

Respondent: Mr. Clement Bird

Issues:

Civil appeal - Debt recovery - Mortgages - Whether the learned judge failed to take into consideration the respondent's instructions to the valuer - Whether the learned judge failed to consider that the advertisement of the auction of sale was woefully deficient and therefore failed to reach the appropriate market - What is the duty of the chargee when exercising a power of sale - Section 75(1) of the Registered Land Act Cap 374 - Whether the chargee in exercising power of sale did so to the detriment of the chargor - Whether the learned judge erred in holding that respondent acted in good faith and had given due regard to the appellant's interests

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The court shall treat the value of the claim in the court below as \$50,000.00 as agreed by the parties.
3. Costs on the appeal shall be $\frac{2}{3}$ of the sum that would be awarded on a claim valued at \$50,000.00.

Reason:

This was an appeal brought by the appellant against the decision of the learned trial judge dated 5th December 2019 in which the learned judge dismissed the appellant's claim finding that the appellant had not discharged the burden of showing that the respondent/chargee bank failed to have regard to his interest in exercising its power of sale under Section 75 of the Registered Land Act.

The appellant/chargor relied on three grounds of appeal which, put shortly, are that: (1) the learned judge failed to take into consideration the instructions of the respondent to the valuer, Wayne Martin, that: (a) the valuation was to be on the basis of market value; (b) the valuation provide his opinion on the suitability of the property as banking security; and (c) include areas of concern the bank should consider when making its lending decision; (2) the learned judge failed to consider the deficiencies in the newspaper advertisements; and (3) the learned judge erred in concluding that the bank acted in good faith with due regard to the interest of the appellant/chargor when it sold the charged property.

The Court was of the view that the appellant rightly did not vigorously pursue ground 2, having conceded that the issue of the sufficiency of the advertisements formed no part of the pleaded case in the court below and that it would be inappropriate to argue such a ground on appeal.

The Court considered grounds 1 and 3 together as they related to the issue of whether the learned judge was wrong to conclude that the appellant/chargor had not shown that the bank had acted in bad faith or had not had regard to his interests. The learned judge, after setting out the law at paragraphs 6 and 7

of her ruling, went on to conduct an analysis based on the evidence before her at the trial. At paragraphs 9, 10, and 11 she stated:

“[9] The bank, in exercising its power of sale, owes a duty of care to a debtor and is required to obtain the true market value or if this is not attainable, the best price reasonably available of the mortgaged property. The duty of the bank is not to get the best price but the true market value at the time of the sale acting in good faith.

[10] The market value of property is usually informed by valuation reports from qualified valuation surveyors. Various recognised approaches and methodologies are used in arriving at the open market value of a property.

[11] Lord Salmon in Cuckmere Brick Co [1971] Ch 949, states that: “Valuation is not an exact science. Equally careful and competent valuers may differ within fairly wide limits about the value of any piece of land. But there are limits. When there is conflict, it is for the judge to decide which evidence is to be preferred”.”

At paragraph 12, the learned judge also obtained guidance from the Court of Appeal decision in Caribbean Banking Corporation v Alpheus Jacobs ANUHCVAP2004/010.

At paragraphs 16 - 20 she said:

[16] Mr. Martin, in cross examination, admits the disparity in the valuations but states that different methods were used in arriving at the value in his two valuations. Mr. Martin said that the first valuation was conducted using the “Market Value approach” which gave the property a higher value than the “Income Capitalization Approach” used for the auction sale.

[17] Mr. Martin was of the view that “Income

Capitalization Approach” was the preferred method having regard that the building was an apartment building generating rental income. He further stated that many issues such as inefficiencies of building, external obsolescence, market location, poor management of the building, economic indicators could affect the value of the property at the time of the valuation.

[18] What is apparent is that each valuation was conducted using the various approved methodology. I accept Mr. Martin’s evidence that the “Income Capitalization Approach” was the preferred methodology for income generating properties such as rental properties which include non-owner-occupied building, houses and duplex, apartment building, etc. The income from rent that an owner expects is also a part of the value of that property as the market and forced sale value of a rented property can be influenced by prevailing rental trend less expenses.

[19] At the trial, the claimant by his own admission alluded to the fact that he experienced difficulty in renting all the units as he was only able to rent out a few of the units. He stated further that the low rental income received had to be used for the maintenance and upkeep of the building.

[20] The fact that the two valuations differed significantly or were at great disparity did not make the valuations erroneous. As was indicated in Cuckmere, a valuation [is] not an exact science. What is required is for the bank to act reasonably in obtaining the best market value at the time of sale. The onus is on the claimant to prove the breach of duty of the bank.”

The thrust of the appellant’s submission before this Court was that the Court should conclude, without more, that the instructions from the bank and the purpose of the valuation coupled with the use of the

Income Capitalization Approach, demonstrated that the bank, acting on the valuation prepared on that basis, did not have regard to the interest of the appellant/chargor.

Counsel conceded that there was no expert evidence or any other evidence demonstrating that a different set of instructions would yield a different result or would show that the valuation method adopted would have been wrong for the purpose of a forced sale. Interestingly, the report of Mr. Simon, who was unable to give evidence because of his death, did not include a forced sale value, but did include a valuation based on the Income Capitalization Approach. In considering both valuations and the disparities which would have been before the learned judge, it could not be said that the valuer, Mr. Martin, who was an experienced valuer, would have performed a valuation that was not in keeping with the requisite professional standards.

In essence, the bank's ultimate aim was to realize its security. In the absence of evidence from a valuer supporting the conclusion sought by the appellant, the Court found it difficult to conclude that the learned judge failed to have regard to the evidence that was before her. This Court, similarly, could not speculate as to what evidence there could have been before the court. The Court therefore concluded that there was no basis for disturbing the conclusion arrived at by the learned judge and accordingly the appeal was dismissed.

Case Name:

Shawnoy Anthony

v

The King

**[ANUHCRA2020/0009]
(Antigua and Barbuda)**

Date:

Monday, 6th March 2023

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Wendel Alexander

Respondent: Mrs. Shannon Jones-Gittens

Issues: Criminal appeal – Appeal against sentence - Whether the sentence was too harsh - Whether the learned judge failed to find an appropriate starting range for calculating sentence - Whether the learned judge failed to consider time spent on remand - Whether the learned judge failed to consider Section 3B of the Offences Against the Person Act Cap 300 of the Laws of Antigua and Barbuda

Type of Order: Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal against sentence is dismissed, save that the 1000 days which the appellant spent on remand shall be credited to him.

Reason:

This was an appeal against the sentence of 25 years imposed on the appellant for the offence of murder following a belated guilty plea. The appellant, by an amended notice of appeal, posited that the sentence was harsh and was wrong in law and procedure having regard to Section 3B of the Offences Against the Person Act. Further, the appellant posited that the trial judge failed to expressly credit him with time spent on remand.

It was submitted that the judge adopted a wrong starting point of 40 years having regard to previous case law in the jurisdiction which established a

starting point of 30 years. The appellant argued that, had the judge adopted a starting point of 30 years, the sentence would have been less severe.

It was the Court's view that on a proper reading of the judge's sentencing remarks, the approach that he took was to consider all of the aggravating and mitigating circumstances of the offence and the offender before concluding that the starting point should be 40 years. The reasoning left the Court in no doubt as to the basis upon which the judge determined that a sentence of 40 years was an appropriate starting point. They accordingly found no fault with his approach in that regard.

The second point argued on behalf of the appellant was that the learned judge did not take the personal circumstances of the appellant into account, namely, that he had three children. It was conceded that that factor was not something that was placed before the learned judge. In those circumstances, there could be no error of principle if the judge did not consider or refer to a mitigating factor which was not placed before him.

It was also argued that the judge failed to indicate in his sentencing remarks why he did not consider the appellant for a period of review as prescribed in Section 3B of the Offences Against the Person Act. The Court found that the judge had the discretion whether to impose a "tariff" as it is commonly called or a term which the appellant must serve before he is eligible for review. In this case, the judge did not opt to do so and the Court found that it was not an error of principle as the statute vests him with a discretion.

The other ground argued by the appellant was that the judge failed to expressly credit the appellant with the 1000 days that he spent on remand. The Court found that there was merit to this ground and it is settled that in pronouncing sentence, a trial judge is required to calculate the period of time spent on remand by a prisoner and to expressly deduct that from the sentence to be imposed. The Court found that in this case, the judge appears to have taken the

view that that deduction was already provided for in the statute and did not consider it necessary. Best practice requires that that should be done and in those circumstances, the Court noted that this particular argument had merit.

For those reasons, the appeal against sentence was dismissed, save that the Court expressed that the 1000 days which the appellant spent on remand shall be credited to him.

Case Name: **Sian Participation Corp (In Liquidation)**

v

Halimeda International Limited

**[BVIHCMAP2021/0017]
(Territory of the Virgin Islands)**

Date: **Tuesday, 7th March 2023**

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

Appearances:

Applicant: **Mr. Tom Smith, KC with him Mr. Paul Fradley, Mr. Andre McKenzie and Mr. Stewart**

Respondent: **Mr. Paul Lowenstein KC with him Mr. Rupert Hamilton, Mr. Andrew Willins and Ms. Tamara Cameron**

Issues: **Motion for conditional leave to appeal to His Majesty in Council - Appeal as of right - Decision by learned judge appointing liquidators over applicant company - Decision by learned judge placing applicant company in liquidation by reason of insolvency - Whether an appeal from a decision whereby**

liquidators were appointed by the learned judge lay as of right - Whether order by learned judge was a final or interlocutory order - Section 3(1)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967("the 1967 Order") - Appeal with leave of court - Whether appeal is of great general or public importance or otherwise ought to be submitted to His Majesty in Council - Debt subject to arbitration clause - Section 3(2)(a) of the 1967 Order

Type of Order:

N/A

Result / Order:

IT IS HEREBY ORDERED THAT:

The decision is reserved.

Case Name:

[1] Avagay Hervelyn Cummings (Acting on behalf of and by virtue of a Power of Attorney duly given by Christine Evans and suing in her capacity as personal representative of the Estate of the late Lashauna Sheleta Bridgen also called Lashauna Sheleta Blidgen also called Lashauna Shelet Bridgen)

[2] Chafray Chafral Bridgen (Suing in his capacity as personal representative of the estate of the late Lashauna Sheleta Bridgen also called Lashauna Sheleta Blidgen also called Lashauna Shelet Bridgen)

v

Diondre Samuel

**[ANUHCVP2023/0004]
(Antigua and Barbuda)**

Date:

Tuesday, 7th March 2023

Coram:

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

Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Applicants: **Mrs. Ruth-Ann Richards-Simpson and Ms. Christelle Wilson**

Respondent: **Mr. Wendel Alexander**

Issues: **Application for leave to appeal**

Type of Order: **Oral Decision**

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

- 1. Leave is granted to appeal the Order of Her Ladyship Justice Dia Forrester delivered on or about 2nd February, 2023 wherein Her Ladyship dismissed the applicants' urgent application for an interim payment.**
- 2. Counsel for the applicant shall file the Notice of Appeal within 14 days of today's date.**
- 3. No order as to costs.**

Reason: **The Court noted that counsel for the respondent had no objection to the application and so leave to appeal was granted.**

Case Name: **Samuel Benjamin Bankman-Fried**

v

[1] Angela Barkhouse and Toni Shukla
(as receivers of Emergent Fidelity
Technologies Ltd)

[2] Emergent Fidelity Technologies Ltd

**[ANUHCVP2023/0002]
(Antigua and Barbuda)**

Date: Wednesday, 8th March 2023

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

Appearances:

Applicant/Appellant: Dr. David Dorsett and Mr. Jarid Hewlitt

Respondents: Mr. David Joseph, KC with him Mr. Kendrickson Kentish and Ms. Kathleen Bennett

Mr. Lenworth Johnson holding a watching brief for BlockFI Inc.

Issues: Application to revoke order of a single judge - Security for costs - Whether the learned judge erred in his exercise of discretion in making the order for the payment of security for costs as a condition for continuing the appeal

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The application to revoke the order of a single judge is dismissed, save that time for providing the said security for costs so ordered, shall be extended to being no later than Wednesday 22nd March 2023 at 4:00 pm, failing which the appeal will stand dismissed without further order.
2. The costs of the revocation application shall be borne by the applicant/appellant to be assessed unless agreed within 21 days.

Reason:

This was an application made by the applicant/appellant to revoke the order of the single judge of the Court of Appeal, made on 1st March 2023, ordering that the applicant/appellant provide security for costs of the appeal in the sum of \$150,000.00. The security was ordered to be paid on or before 4:00pm on 3rd March 2023.

The Court having heard the application, and having read the various affidavits and the submissions filed in support, was satisfied that there was no basis shown to disturb the exercise of discretion carried out by the learned single judge. The Court was fully satisfied that the learned single judge had regard to all the relevant principles and considered the various factors disclosed in the evidence before him and that it was open to him to conclude, as he did, that the case was a proper one for the giving of security for the appeal by the applicant. The Court accordingly dismissed the application for the revocation of the order of the single judge and made the above order.

Case Name:

**[1] Jesse James Khoully
[2] Sandy-Ann Khoully
(Administrators of the Estate of Wafaa
Khoully nee Hadeed aka Waffa Khoully nee
Hadid aka Wafaa Khoully)**

v

Mount St. John's Medical Centre Board

**[ANUHCVP2022/0005]
(Antigua and Barbuda)**

Date:

Wednesday, 8th March 2023

Coram:

**The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellants:

Mr. Kendrickson Kentish

Respondent: Mr. George Looby

Issues: Civil appeal - Appeal against decision granting application to strike out claim form and statement of claim - Whether the master erred in finding that the medical doctor was exercising a public duty - Whether the master erred in finding that the Public Authorities Protection Act ("PAPA") applied to the instant case - Whether the master erred in law and fact by finding that the appellants' claim had been filed outside of the limitation period prescribed by the PAPA - Whether the learned master erred in law and/or fact by failing to properly consider and apply the test in *Daphne Alves v The Attorney General of the Virgin Islands* ([2017] UKPC 42) to the pleaded facts of this case

Type of Order: Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed and the orders of the master are set aside.
2. This issue is remitted for determination at the trial of the substantive claim in the court below.
3. The respondent shall pay the appellant's costs in the court below set at \$1,500.00 and costs in the appeal set at \$1,000.00.

Reason: Before the Court was an amended notice of appeal filed on 24th February 2022 by the administrators of the estate of Wafaa Khouly nee Hadeed aka Waffa Khouly nee Hadid aka Wafaa Khouly as appellants against the Mount St. John's Medical Centre Board as respondents. The appellants appealed against the decision of the learned master given on 1st December 2021 in Claim No. ANUHCv2020/0031 by which the learned master in a written decision granted the respondent's application to strike out the claim form and statement of claim on the grounds

that it was an abuse of process and more specifically that the limitation period of 6 months in the Public Authorities Protection Act applied and the claim having been brought approximately 1 year after the death of the deceased was statute barred. It was noted that in giving the decision the learned master also made an order that appellants shall pay the Board's costs of the application to be assessed if not agreed.

The Court considered the grounds of appeal in this matter, the written and oral submissions of learned counsel of the appellants and respondents and in particular the principles set out in the decision of the Privy Council *Daphne Alves v The Attorney General of the Virgin Islands* [2017] UKPC 42 and in particular at paragraph 12, 27, 35, 36 and 37.

The Court also considered the learning in other decisions of this Court in relation to this particular issue. The Court was satisfied that the learned master erred in applying the principles as set out in the *Alves* case, the basic principles not being in dispute either before the learned master or before this Court.

The Court also determined, based on these principles, that the orders of the master ought to be set aside and that the appropriate course of action is to remit the issue posed in the application to strike out the claim and statement of claim for consideration and determination during the trial of the matter in the court below. Accordingly, the appeal was allowed.

Case Name:

Carlton Kentish

v

Rolston Milton Joseph

**[ANUHCVP2022/0023]
(Antigua and Barbuda)**

Date: Thursday, 9th March 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Kyle Kentish

Respondent: No appearance

Issues: Application for leave to appeal - Whether leave should be granted to appeal against the decision of Robertson J dated 24th November 2022

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The applicant is granted leave to appeal against the decision of Robertson J rendered on 24th November 2022.
2. The applicant shall file and serve a notice of appeal within 14 days of the date of this order and the appeal shall proceed in accordance with Part 62 of the Civil Procedure Rules 2000.

Reason: The Court, having read the application and affidavit and the written submissions of counsel for the applicant, was of the view that the threshold of real prospect of success on appeal had been met, and so leave to appeal was granted.

Case Name: [1] Mary-Clare Hurst in Her Capacity as
General Secretary of the
Antigua and Barbuda Labour Party
[2] Paul Chet Greene, in his capacity as
Chairman of the Antigua

**and Barbuda Labour Party
[3] Gaston Bowne, in his capacity as Political
Leader of the Antigua
and Barbuda Labour Party**

v

Asot A. Michael

**[ANUHCVAP2022/0019]
(Antigua and Barbuda)**

Date: Thursday, 9th March 2023

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Dr. David Dorsett

Respondent: Ms. Kema Benjamin

Issues: Interlocutory appeal - Default judgment - Jurisdiction of court office to enter default judgment - Whether the learned master erred in finding that court office had no jurisdiction to enter a default judgment in favour of the appellants - Lux Locations Ltd. v Yida Zhang [2023] UKPC 3

Type of Order: Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. There is no order as to the costs on the appeal.**
- 3. The order of the learned master that the appellants pay the respondent's costs in the lower court is affirmed.**

Reason:

In this matter, the appellants filed a counterclaim seeking declaratory relief in response to the respondent's claim. No defence to the counterclaim having been filed, the appellants filed a request for judgment in default of defence using Form 7 of the Civil Procedure Rules 2000 ("the CPR" or "the Rules") and asking that the terms of the judgment be determined by the court.

The respondent applied to set aside the default judgment that was entered. The learned master who heard the application, set aside the default judgment as being irregularly entered. The appellants appealed against the learned master's decision, relying in part on the Court of Appeal decision in Lux Locations Ltd v Yida Zhang ANUHCVP2020/0025 (delivered 11th January 2021, unreported).

Since the filing of the appeal, the Privy Council has delivered its decision in Lux in which it overruled the decision of the Court of Appeal. The decision of the Privy Council directly impacted the grounds of appeal in this appeal. Dr. Dorsett, who appeared for the appellants, advised the Court that he was no longer proceeding with the appeal in the way that he initially intended to. He submitted that if the Court were to dismiss the appeal, it should order that the application which was filed to determine the terms of the default judgment be treated as a proper application before the High Court to grant the default judgment and to determine the terms. Ms. Benjamin, who appeared for the respondent, did not agree with this and effectively suggested that the appellants are to comply with the law and directions which were given by the Privy Council in Lux.

The Court declined Dr. Dorsett's request and further refused to give directions regarding how the matter would proceed in the High Court.

On the issue of costs, Ms. Benjamin asked that costs follow the event and that the respondent should be awarded costs on the appeal. Dr. Dorsett asked that there be no order as to the costs on the appeal in

view of the developments in the law brought about by the Lux decision and its impact on the appeal. The Court was of the view that there was some merit in Dr. Dorsett's position. The Court noted that the Rules state that an application for default judgment is made by Form 7 and that Form 7 is set out in rule 12.7 of the CPR, which deals with the procedure for applying for default judgment. The Court noted that Rule 12.7 says very clearly and simply "a claimant applies for default judgment by filing a request in Form 7." The Court also noted that Form 7 includes judgment for some other remedy. The Court noted that there is provision in the rules for how the matter proceeded by the appellants in the lower court and also accords with what was the practice in the Eastern Caribbean at the time.

Having regard to the development of the law, the Court was minded to dismiss the appeal. The Court considered that this was not a case where the appellants disregarded the rules and practice in the Eastern Caribbean before the Lux case and, in its discretion, made no order as to costs in the appeal.

Case Name:

Joseph W Horsford

v

[1] The Attorney General

[2] Geoffrey Croft

[ANUHCVP2022/0028]

(Antigua and Barbuda)

Date:

Friday, 10th March 2023

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Trevor Ward, Justice of Appeal

The Hon. Mr. Gerard St. C. Farara, Justice of Appeal

[Ag.]

Appearances:

Appellant:

In person

Respondents:

Mrs. Carla Brookes-Harris for the first respondent

Mr. Sylvester Carrott for the second respondent/applicant

Issues: **Application to strike out notice of appeal**

Type of Order: **Adjournment**

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

IT IS HEREBY ORDERED THAT:

The hearing of the application is adjourned to Wednesday 29th March 2023 at 9:00 am.

Reason: **The matter was scheduled before the Court so as to fix a date for hearing of the application. The Court proposed that the application be heard on Wednesday 29th March 2023, and all the parties agreed.**

Case Name: **Joseph W Horsford**

v

Geoffrey Croft

**[ANUHCVP2021/0017]
(Antigua and Barbuda)**

Date: **Friday, 10th March 2023**

Coram: **The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: **In person**

Respondent: **Mr. Sylvester Carrott**

Issues:

Civil appeal - Assault and Battery - Balance of probabilities - Whether the appellant proved facts that amount to assault in the first instance and/or battery - Whether in all the circumstances, the conduct of the respondent was as outrageous as would merit condemnation and punishment by the Court in exemplary damages - Findings of fact - Appellate interference with findings of fact in the court below - Whether the trial judge could properly arrive at the conclusion that she did based on the evidence before her; or whether, based on the available evidence, the reliability and credibility of which she had to assess, she was plainly wrong

Type of Order:

Oral Judgment with written reasons to follow

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed and the orders of the trial judge are affirmed.**
- 2. Pursuant to paragraph 5 of the order of the Court of Appeal dated the 29th day of May 2020 in ANUHCVP2018/004, the appellant Mr. Joseph Horsford shall pay the respondent Mr. Geoffrey Croft the costs of the trial in ANUHCVP2012/0336, such costs to be determined by a judge of the High Court on the prescribed regime.**
- 3. The appellant Mr. Joseph Horsford shall pay the respondent Mr. Geoffrey Croft the costs on this appeal to be assessed by a judge of the High Court, such costs not to exceed $\frac{2}{3}$ of the costs below.**

Case Name:

Antigua and Barbuda Transport Board

v

Anderson Carty

Antigua and Barbuda Transport Board

v

Anique Francis

[ANUHLTAP2020/0005]

[ANUHLTAP2020/0006]

(Antigua and Barbuda)

Date: Friday, 10th March 2023

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Trevor Ward, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Hugh Marshall

Respondents: In person

Issues:

Civil appeal - Redundancy - Appeal against monetary awards made to the respondents - Whether the Labour Tribunal erred in law in computing the respondents' entitlement to immediate loss by including allowances and other amounts which were not components of their basic wages - Whether the Tribunal erred in law in awarding immediate loss in the amount of \$52,525.00 being the total emoluments of the unexpired and unpaid portion of the first respondent's fixed term contract of 5.5 months - Whether the Tribunal erred in law in awarding the respondents exemplary damages - Whether the Tribunal erred in law in making an award for thrift fund contribution to the first respondent when no claim was made for same - Whether the Labour Tribunal had regard to the obligation of the respondents to mitigate their loss - Whether the Labour Tribunal erred in law in making an award for costs in the absence of exceptional circumstances in breach of Section 10(2) of the Industrial Court Act Cap. 214

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.