

**THE EASTERN CARIBBEAN SUPREME COURT**  
**COURT OF APPEAL SITTING**

**TERRITORY OF THE VIRGIN ISLANDS**  
**VIDEOCONFERENCE**  
**Friday, 29<sup>th</sup> July 2022**

**JUDGMENTS**

**Case Name:** **Bon Bank Ltd**  
**v**  
**General Business Company Limited**

**[NEVHCVAP2019/0001]**  
**(Saint Christopher and Nevis)**

**Date:** **Friday, 29<sup>th</sup> July 2022**

**Coram:** **The Hon. Mr. Mario Michel, Justice of Appeal**  
**The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**  
**The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

**Appearances:**

|                    |                          |
|--------------------|--------------------------|
| <b>Appellant:</b>  | <b>Ms. JeNise Carty</b>  |
| <b>Respondent:</b> | <b>Ms. Edisha Greene</b> |

**Issues:** **Civil appeal – Contract Law – Offer and acceptance – Whether 9<sup>th</sup> January 2015 letter to the respondent amounted to an offer – Whether a binding contract was created by the exchange of letters between the appellant and the respondent – Whether the learned judge erred in finding that a binding contract existed – Principles applicable to the construction and interpretation of a document as an offer**

**Result/Order:**

**IT IS HEREBY ORDERED THAT:**

1. The appeal is allowed.
2. The judgment and orders of the High Court are set aside.
3. The claim filed by the respondent on 5th September 2016 is dismissed.
4. Judgment is entered for the appellant on its counterclaim to the extent that the declaration sought at paragraph 1 therefore is granted in part. Accordingly, it is declared that the letter from the defendant/appellant to the lawyers for the claimant/respondent dated 9<sup>th</sup> January 2015 and the letter from the lawyers for the claimant/respondent to the defendant/appellant dated 23rd January 2015 did not constitute an enforceable agreement or contract between the appellant and the respondent.
5. The respondent shall pay the appellant's prescribed costs of the claim in the High Court pursuant to CPR 65.5(2)(a), the appellant's costs of the counterclaim pursuant to CPR 65.5(2)(b), and also costs of the appeal limited to no more than two-thirds of the costs in the High Court, to be assessed unless agreed within 30 days.

**Reasons:**

1. When construing a document so as to determine if the statements contained therein amount to an offer capable of acceptance, the court must ask the question whether, objectively, a reasonable man in the shoes of the claimant, having knowledge of the relevant circumstances, would understand that the defendant was making a proposal or offer to the claimant, which the defendant intended to

be bound by in the event of an unequivocal acceptance.

Crest Nicholson (Londinium) Ltd v Akaria Investments Ltd [2010] EWCA Civ 1331 applied; Centrovincial Estates plc v Merchant Investors Assurance Co. Ltd [1983] Com LR 158 applied; Harvey v Facey [1893] AC 552 considered.

2. Evidence as to the intention or understanding of the parties to a binding agreement are irrelevant to the court's determination of what the actual words of the document, which fall to be construed, mean. Therefore, in order to properly determine whether the 9th January 2015 letter was an offer, the court must construe the letter within its four corners and the context in which the alleged 'offer' or proposal was made.

Harvey v Facey [1893] AC 552 considered; Global 5000 Ltd v Sarang Wadhawan [2011] EWHC 853 (Comm) considered; Lovell & Christmas Ltd v Wall (1911) 104 LT 85 considered.

3. The letter dated 9th January 2015 from the Bank to GBCL, when viewed objectively, does not evince an intention on the part of the Bank to create legal relations, and a reasonable man, in the shoes of GBCL, would not have concluded that the Bank was, by the said letter, making an offer or proposal with regard to a new maturity date of February 2016 for acceptance or rejection by GBCL. The letter is not couched in the language of an offer or a proposal with regard to a new maturity date of February 2016, capable of acceptance by GBCL. Further, it does not invite or require a

response from GBCL, whether expressing their agreement, rejection, or to make a counter proposal. Rather, the said letter was informative, directive and declaratory. It was informative that the Bank had credited the sum of EC\$39,551.34 to GBCL's loan account, and declaratory as to a new maturity date which had already been made effective by the Bank in relation to GBCL's said loan facility. Accordingly, the learned judge erred in finding that the letter dated 9th January 2015 was an offer or proposal as to a new maturity date which was accepted by GBCL in its letter of 23rd January 2015 to the Bank, thereby creating a binding agreement between the parties.

4. Contrary to the learned judge's findings, the email from the Bank's new country manager to GBCL's lawyers on 6th July 2016, which expressly stated that the Bank would conform to its letter dated 9th January 2015 and was taking steps to reverse certain entries 'to backdate as at February 2016' with regard to GBCL's loan facility, is not, in the circumstances, evidence of the existence of a binding 'settlement agreement' between the Bank and GBCL. An email simply stating that the Bank would conform to its 9th January 2015 letter could not convert, several months later, the letter dated 9th January 2015 into an offer. Moreover, while GBCL did rely on the 6th July 2016 email in its statement of claim, it did not seek any specific relief in relation to it, such as, for example, based upon the equitable doctrine of estoppel. The crux of GBCL's case was that the Bank had breached the terms of the 'settlement agreement' created by the two January 2015 letters. It was never pleaded or raised before the learned

judge in the court below, that the 6th July 2016 email constituted or brought into existence a new contract between the Bank and GBCL with regard to the new maturity date of the loan being February 2016, which new agreement had been breached by the Bank. In those circumstances, the July 2016 email, while of some importance evidentially, does not alter the position that GBCL's case of the existence of a binding 'settlement agreement' had not been made out.

|              |                                                                                                                                                                                                                                                               |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Case Name:   | <p><b>The Attorney General of Antigua and Barbuda</b></p> <p><b>v</b></p> <p><b>HMB Holdings Limited</b></p> <p><b>[ANUHCVAP2020/0011]</b></p> <p><b>(Antigua and Barbuda)</b></p>                                                                            |
| Date:        | <p><b>Friday, 29<sup>th</sup> July 2022</b></p>                                                                                                                                                                                                               |
| Coram:       | <p><b>The Hon. Mr. Mario Michel, Justice of Appeal</b></p> <p><b>The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]</b></p> <p><b>The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]</b></p>                                                          |
| Appearances: |                                                                                                                                                                                                                                                               |
| Appellant:   | <p><b>Mrs. Carla Brookes-Harris, Mrs. Thomas and Dr. David Dorsett</b></p>                                                                                                                                                                                    |
| Respondent:  | <p><b>Mrs. Tana'ania Small Davis, QC with her Mr. Jomokie Phillips</b></p>                                                                                                                                                                                    |
| Issues:      | <p><b>Civil appeal - Compulsory acquisition of land - The Land Acquisition Act - Section 9(1) of the Constitution of Antigua and Barbuda - Award of compensation inclusive of interest by a Board of Assessment - Right of appropriation of payment -</b></p> |

**The rule in Clayton's Case - Common justice principles - Whether the Government had at common law a right of appropriation of payments made to the respondent first to the principal sum of the award - Whether the respondent had the primary right of appropriation in relation to the award - Whether the rule in Clayton's Case applies to payment of an award of compensation under the Land Acquisition Act - Whether an award of a Board of Assessment under the Land Acquisition Act is a judgment debt - Section 26(2) of the Limitation Act 1997 – Whether pursuant to Section 26(2) of the Limitation Act the respondent is barred from recovering arrears of interest accruing under the award beyond the expiration of six years**

**Result/Order:**

**IT IS HEREBY ORDERED THAT:**

- 1. The appeal is dismissed.**
- 2. The declarations and orders made by the High Court are affirmed.**
- 3. Costs are awarded to the respondent to be assessed by a judge of the High Court, if not agreed within 21 days.**

**Reasons:**

- 1. The common law rules relating to the right, as between a debtor and a creditor, to appropriate payments made by the debtor in partial satisfaction of a debt or debts fall, broadly, into two categories. The first is the rule in Clayton's Case and the second, the 'old' or well-established rule of common justice as recognised by Rigby LJ in Parr's Banking Company Limited v Yates. Both rules are of general application and are subject to the particular circumstances in which the debt being considered has arisen. Neither of these rules are expressed in the case law to be of universal application to any and all situations where a debtor makes a payment towards satisfaction of a debt. The rule in Clayton's**

Case has been readily applied where a single payment is made by the debtor in circumstances where there exists more than one debt or account owed to or held by the debtor with the creditor. In such circumstances, the debtor clearly has the paramount or first right of appropriation of the payment, unless the contractual documents or the established practice or course of dealing between the parties dictate otherwise, or provide or stipulate a right of appropriation different from that elected by the debtor. The rule in *Parr's Banking Company Limited v Yates*, on the other hand, which applies in situations where a single debt carries interest, requires that a payment made by the debtor is, ordinarily, to be applied first in payment of interest due on the debt.

*Devaynes v Noble*, *Clayton's Case* (1816) 1 Mer. 572 considered; *Parr's Banking Company Limited v Yates* (1898) 2 QB 460 considered.

2. The rule in *Clayton's Case* does not apply and was never intended to apply to situations where there is a principal sum which attracts interest or to which interest is accruing. In those circumstances, there is only one debt which consists of both principal and interest. In the instant matter, there is only one award which comprises the compensation sum for deprivation of the property and interest thereon at a specified rate until the entire award has been paid in full. By contrast where the rule in *Parr's Banking Company Limited v Yates* applies, any sums paid by the debtor to the creditor must be applied first to interest outstanding and, if any surplus, to principal. The operation of this old or well-established rule of common justice is not stated to be

contingent upon the exercise by the debtor of an existing right of appropriation.

**Devaynes v Noble, Clayton's Case (1816) 1 Mer. 572 distinguished; Cory Brothers and Company Limited v The Owners of the Turkish Steamship "Mecca" [1897] AC 286 distinguished; Florence Deeley v Lloyds Bank Limited 1912] AC 756 considered; Falk v Haugh (1935) 53 CLR 163 distinguished; Meka Venkatadri Appa Row Bahadur Zemindar Garu and others v Raja Parthasarathy Appa Row Bahadur Zemindar Garu (Madras) [1921] UKPC 32; Privy Council Appeal No. 40 of 1919 distinguished; Parr's Banking Company, Limited v Yates (1898) 2 QB 460 considered.**

3. In the instant matter, there is one award of compensation for the compulsory acquisition of the respondent's property. The award comprises the principal compensation sum for the loss of the property and interest at a certain rate or rates until the entire award has been paid in full. The rule in Clayton's Case, by which the debtor has the first right of appropriation of a part payment, has no application to an award of compensation by a Board of Assessment for the compulsory acquisition by the Government of a landowner's property, as an exception to the landowner's constitutional protection from having his property acquired by Government without his consent or agreement. Moreover, this common law rule does not apply to an award made under and pursuant to the provision of the Land Acquisition Act. These common law rules or principles apply more aptly to contractual debts and debts arising by way of mortgages, guarantees, bills of exchange and other commercial transactions.

Likewise, these common law rules and principles have no place in giving legal effect to the full realisation by a landowner, whose property has been lawfully acquired by the Government, of his or her constitutional entitlement to the payment of fair compensation within a reasonable time.

The Land Acquisition Act, Cap 233, Revised Laws of Antigua and Barbuda considered.

4. To apply the common law rules and principles from Clayton's Case, forged in contractual and commercial situations, would run contrary to the purpose and function of an award of statutory interest as part of the compensation for the loss suffered by the landowner as a direct result of the Government's actions in acquiring his or her property for a public purpose. In a contractual context, interest serves as the price for the delay in repayment of the money owed. In that context, payment of interest by the borrower or debtor or mortgagor is an integral part of the bargain struck between the parties to such agreements. It is part of the price for using someone else's money for your purposes. In the non-contractual context, interest serves as recompense to the creditor for the delay by the debtor in making payment, in circumstances where the debtor has no contractual or other legitimate right to enforce such delay. The role and purpose of interest in matters such as the instant case, is to compensate the landowner for any delay in the Government making payment of the fair compensation within a reasonable time.

The London, Chatham and Dover Railway Company v South Eastern Railway Company

**[1893] A.C. 429 considered; The Attorney General of Antigua and Barbuda v The Estate of Cyril Bufton et al ANUHCVAP2004/0022 (delivered 6th February 2006, unreported) considered.**

- 5. There is no case law cited dealing with the question of the applicability of the common law rules and principles relating to the right of appropriation of part payments in satisfaction of a debt on which interest is also due, to an award of compensation by a Board of Assessment under the Land Acquisition Act. Faced with such a situation, the learned judge was correct to resort to principles of 'common justice' when determining the appropriation issue.**
- 6. As a matter of fairness, to permit the Government to postpone its satisfaction of the respondent's clear entitlement to payment of interest on the principal sum of the award, by appropriating payments first to the principal, would be manifestly unfair to the respondent which has, for too long, been kept out of its money by the Government, and runs contrary to the spirit and letter of section 21 of the Land Acquisition Act, and what is contemplated by section 9 of the Constitution. Furthermore, it would be contrary to the terms of the award of the Board of Assessment, as varied by the 2014 judgment and order of the Privy Council, which order provided for payment of the sum of US\$9,560,000.00 interest up to 22nd January 2011, and interest at 4% continuing to run on the principal sum of the award until the entire award has been paid in full. In those circumstances, there was no existing right of appropriation by the Government of payments made towards satisfaction of the award and,**

accordingly, its purported appropriation of the payment of US\$20 million to principal first was invalid and ineffective.

Section 21 of the Land Acquisition Act, Cap 233, Revised Laws of Antigua and Barbuda considered; Section 9 of The Constitution of Antigua and Barbuda SI No. 1106 of 1981 considered.

7. The process under the Land Acquisition Act by which the amount of compensation to be paid by the Government to a landowner for the compulsory acquisition of his or her property is to be assessed and awarded, is not court proceedings. The proceedings before a Board of Assessment leading to the determination of an award of compensation are not commenced by any originating process or application. A Board of Assessment duly appointed under the Land Acquisition Act, is not a court of law, but a quasi-judicial tribunal, imbued with a special function and with certain powers. Accordingly, the award made in this matter by the Board of Assessment was not a judgment of a court of law in civil proceedings. Furthermore, there is no provision in the Land Acquisition Act which elevates such an award to the legal stature of a judgment of a court of law. The character of the award in this matter has not been changed by virtue of the judgments and orders made on appeal, including the 2014 judgment and order of the Privy Council, by which the quantum of the award was varied or substituted. Therefore, the proceedings of the Board of Assessment being not civil proceeding or proceedings before a court, the provisions of section 26(2) of Limitation Act 1997 cannot apply to bar recovery by the respondent of interest owing

on the principal sum of the award beyond a period of 6 years.

Ruddell v Union Gas Co. Ltd (1974), 6 L.C.R 181 considered; McPhail's Equipment Co. Ltd v Surrey (District) (1990), 44 L.C.R 173 considered; Gairy v Attorney General of Grenada [2002] AC 167 considered; the Land Acquisition Act, Cap 233, Revised Laws of Antigua and Barbuda considered; Section 28 of the Eastern Caribbean Supreme Court (Antigua and Barbuda) Act, Cap 143, Revised Laws of Antigua and Barbuda applied; Part 62 of the Civil Procedure Rules 2000 considered.

**Case Name:**

**Gideon Billingy**

**v**

**Joel Woodley**

**[SVGHCVAP2016/0013]**

**(Saint Vincent and the Grenadines)**

**Date:**

**Friday, 29<sup>th</sup> July 2022**

**Coram:**

**The Hon. Mr. Mario Michel, Justice of Appeal  
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]  
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:**

**Mr. David Dorsett holding papers for Mr. Gideon Billingy**

**Respondent:**

**Mr. Jomokie Phillips holding papers on behalf of Mr. Joel Woodley**

**Issues:**

**Civil appeal – Land law – No case submission –  
Locus standi – Section 7(2) of the Possessory  
Titles Act, 2004 – Whether the entry of an appearance**

by the respondent was sufficient to afford him locus standi – Adverse possession - Application for declaration of possessory title – Whether the judge erred in finding that the appellant had not established adverse possession by his father - Relativity of title – Whether transmission of possessory rights is permitted under the laws of Saint Vincent and the Grenadines – Interruption of possession – Whether the judge erred in finding that the appellant's eight-month absence from the country interrupted his possession of the land – Whether section 8(1) of the Possessory Titles Act, 2004 is a mandatory provision – Whether the judge erred in finding that the failure to comply with section 8(1) was fatal to the application

**Result/Order:**

**IT IS HEREBY ORDERED THAT:**

1. The appeal is dismissed.
2. The order of the trial judge upholding the no case submission and dismissing the claim is upheld.
3. The trial judge's award of costs to the respondent, agreed by both counsel in the amount of \$2,500.00, is affirmed.
4. The appellant shall pay the respondent's costs on this appeal in the amount of \$1,666.66, being two thirds of the amount awarded as costs in the court below.

**Reasons:**

1. The entry of an appearance through a legal practitioner pursuant to section 7(2) of the Possessory Titles Act is sufficient to give a party the requisite locus standi to oppose an application for a declaration of possessory title. Thus, the appellant's contention that the respondent needed a grant of letters of administration to represent his deceased grandparents and to participate in these proceedings was without merit. The

respondent never sought to institute proceedings or make an application to this Court; he simply entered an appearance pursuant to section 7(2) of the Act, as he was required to do, as a person claiming an interest in the disputed land.

Section 7(2) of the Possessory Titles Act, 2004 Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009 applied; Delcine Thomas v Victor Wilkins ANUHCV2007/0530 (delivered October 29th 2009, unreported) distinguished; Millburn-Snell v Evans [2011] EWCA Civ 577 distinguished; Patricia Bedminster v Marianna Cuffy DOMHCV2016/0132 (delivered 15th August 2017, unreported) distinguished.

2. In order to establish at least a prima facie case of adverse possession, the elements of adverse possession must be established, or at the very least, alleged. The appellant did not allege, at any stage of the proceedings, that his father was in possession of the land, that his father's occupation of the land was exclusive and undisturbed, or that his father ever had the intention to possess the land as the owner thereof. He also offered no evidence as to when his father commenced his occupation of the land or the circumstances under which he came into occupation of the land – whether by lease or license, or as a squatter. Therefore, the learned judge was entitled to find that the appellant had not established adverse possession of the land by his father.

Section 2 of the Possessory Titles Act, 2004 Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009 applied.

3. The English property law principle of relativity of title which makes provision for the transmission of possessory rights between persons and which enables a claim to adverse possession to be based on successive adverse possessors, who may each be claiming title based on their occupation of the land, does not apply in Saint Vincent and the Grenadines. Therefore, the appellant's claim that he inherited 25 years of adverse possession from his father, to which he added 5 years of his own after his father's death in 2005, has no basis under the laws of Saint Vincent and the Grenadines. He would have had to establish adverse possession in his own right or by his father, or even by the 2 of them on a joint application for a declaration of possessory title.

Willis v Earle Howe [1893] 2 Ch. 545 distinguished; Ellis v Lambeth London Borough Council (1999) 32 HLR 596 distinguished; Perry v Clissold [1907] AC 73 distinguished.

4. No evidence was given by the appellant or his witness of physical control by him of the disputed land and, if there had been any physical control prior to the appellant's eight-month absence from the country, there was certainly none showing that it had continued during his absence and, especially during the period when his father had died and he was out of the country. Maintaining plantains on the disputed land during his absence did not unequivocally show an intention to possess and exclude the paper owners. Therefore, the learned judge did not err in finding that his departure from the country and his remaining

out of the country for eight months in 2005 was an interruption of possession.

Bligh v Martin [1968] 1 WLR 804 distinguished;  
Buckinghamshire CC v Moran [1990] Ch. 623 distinguished.

5. Compliance with section 8(1) of the Possessory Titles Act is not merely a procedural requirement. It is a mandatory provision and subsection (2) clearly stipulates that non-compliance with subsection (1) means that a declaration of possessory title cannot be granted by the court. The appellant's failure to serve one of the adjoining landowners with notice of his claim to adverse possession of the land and his application for a declaration of possessory title pursuant to section 8(1) of the Act was fatal to his application.

Section 8(1) of the Possessory Titles Act, 2004 Cap. 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009 applied.

## **APPLICATION**

Case Name:

**C v H**

Date:

Friday, 29<sup>th</sup> July 2022

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal  
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]  
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. David Allison QC, with him, Mr. Tim Wright and Mr. Stuart Cribb

**Respondent:** Mr. Richard Fisher QC, with him, Mr. Paul Fradley, Ms. Deidre McNamara, and Mr. Andre McKenzie

**Issues:** Application for appeal to be heard in camera -  
Application for leave to adduce fresh evidence -  
Principles in Ladd v Marshall

**Type of Order:** Oral decision

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

1. The application for the appeal to be heard in camera is granted.
2. The application for leave to adduce fresh evidence is refused.

**Reasons:** The Court was of the view that the principles in Ladd v Marshall [1954] 3 All ER 745 had not been satisfied and therefore the application for leave to adduce fresh evidence should not be granted.

**APPEAL**

**Case Name:** C v H

**Date:** Friday, 29<sup>th</sup> July 2022

**Coram:** The Hon. Mr. Mario Michel, Justice of Appeal  
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]  
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. David Allison QC, with him, Mr. Tim Wright and Mr. Stuart Cribb

**Respondent:** Mr. Richard Fisher QC, with him, Mr. Paul Fradley, Ms. Deidre McNamara, and Mr. Andre McKenzie

**Issues:**

**Commercial appeal - Section 273 of the Insolvency Act - Perversity test - Whether judge erred in law in applying wrong test in appointment of conflict liquidators - Whether the judge erred in law in holding that there was an apparent conflict of interest and in directing the immediate appointment of conflict liquidators on that basis - Whether the judge's decision to appoint conflict liquidators was wrong in law and/or not justified by the grounds on which it was purported to be based - Whether the learned judge's decision to dismiss the application to appoint the individuals proposed by the respondents/cross-appellants as conflict liquidators was wrong in law and/or wrong because it was not justified by the reasons given**

**Type of Order:**

**N/A**

**Result /  
Order:**

**[Oral Delivery]**

**IT IS HEREBY ORDERED THAT:**

**Judgment is reserved.**