

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE

ANGUILLA

7th – 11th February 2022

JUDGMENTS

Case Name:

Arricano Real Estate PLC

v

Stockman Interhold S.A.

[BVIHCMAP2021/0009]

(Territory of the Virgin Islands)

Date:

Tuesday, 8th February 2022

**Coram for
delivery of
judgment:**

**The Hon. Mde. Louise Esther Blenman, Justice of
Appeal**

The Hon. Mr. Mario Michel, Justice of Appeal

**The Hon. Mr. Sydney Bennett, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Blair Leahy with Mr. Dave Marshall

Respondents:

Mr. Andrew Willins

Issues:

**Commercial appeal – Insolvency proceedings – The
Insolvency Act, 2003 – Winding up proceedings -
Appointment of liquidators of a company – Genuine
and substantial grounds of dispute - Exercise of
discretion - Whether learned judge erred in holding
that there was a genuine and substantial dispute in
relation to the satisfaction of the obligations under the
2011 Award - Cross-claim – Whether in dismissing
application, learned judge wrong to conclude that
there was a genuine and substantial dispute of an
enforceable cross-claim for damages by Stockman –
Whether learned judge erred in holding that there was
a genuine and substantial dispute if the value of**

Stockman's alleged cross-claim exceeded application debt – Costs – Whether the learned judge erred in ordering Arricano to pay all of Stockman's costs of the application – Whether the learned judge erred in failing to dismiss Arricano's application for leave to rely on expert evidence on the question of limitation

Result and Reason:

Held: dismissing the appeal and affirming the decision of the learned judge in its entirety; awarding costs of the application in the court below to Stockman, to be assessed by a judge of the Commercial Court unless otherwise agreed within 21 days of the date of this judgment; and awarding costs of the appeal to Stockman which are to be assessed at no more than two-thirds of the costs in the court below, unless otherwise agreed within 21 days of the date of this judgment, that:

- 1. Where a company asserts a crossclaim in response to an application to wind it up and to appoint liquidators, the company must also show that its crossclaim is equal to or larger than the disputed debt and that the crossclaim is based on substantial grounds. In determining whether the crossclaim is genuine and based on substantial grounds, the court employs the Sparkasse Bregenz test. Accordingly, the crossclaim must be genuine and serious and not based on frivolous grounds.**

Section 162(1) of the Insolvency Act, No. 5 of 2003, Revised Laws of the Virgin Islands applied; Re Bayoil SA [1999] 1 WLR 147 applied; Montgomery v Wanda Modes Ltd. [2002] 1 BCLC 289 applied; Dennis Rye Limited v Bolsover District Council [2009] EWCA Civ 372 applied; Sparkasse Bregenz Bank AG v In the Matter of Associated Capital Corporation British Virgin Islands Civil Appeal No. 10 of 2002 (delivered 18th June 2003, unreported) applied; Re Ringinfo Ltd [2002] 1 BCLC 210 considered; Abbey National plc v JSF Finance and Currency Exchange Co. Ltd [2006] EWCA Civ. 328 considered; Re Richbell Strategic Holdings Ltd. [1997] 2 BCLC 429 applied.

2. In the case below, in the face of Stockman's assertion of its crossclaim, most of the matters on which Arricano has sought to undergird its application need to be tested in cross-examination to verify their veracity. The necessity for cross-examination in itself indicates that there are genuine and substantial grounds of dispute. This is consistent with the judge's finding that there is a genuine and substantial defence of a crossclaim by Stockman and there is therefore no need for this Court to interfere with the judge's findings in this regard.

Re Janeash Ltd. [1990] BCC 250 applied.

3. Appellate courts exercise a high threshold of appellate restraint in relation to both interferences with a first instance judge's findings of facts and exercise of discretion. An appellate court ought not to overturn a trial judge's findings of facts, the evaluation of those facts and the inferences drawn from them unless those findings were not open to the judge on the evidence. Similarly, an appellate court would only interfere with a trial judge's exercise of his or her judicial discretion if the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors, or by taking into account or being influenced by irrelevant factors and considerations; and that as a result of the error or degree of error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be blatantly wrong. Upon consideration of the issues raised on appeal by Arricano and having given deliberate consideration to the judge's reasoning and holdings, it is clear that the learned judge carefully addressed all of the matters that were taken by Arricano, against the crossclaim Stockman had asserted. The learned judge was fully seized of the relevant facts and made findings that were clearly open to him and

in the totality of the circumstances, the judge properly exercised his discretion not to appoint liquidators pursuant to section 167 of the Insolvency Act. Consequently, there is no basis for this Court to impugn the judge's decision and the appeal in relation to the first three issues is dismissed.

Yates Associated Construction Company Ltd. v Blue Sand Investments Limited [2016] ECSCJ No. 71 (delivered 20th April 2016) applied; Fage UK Ltd. v Chobani UK Ltd. [2016] ECSCJ No. 71 (delivered 20th April 2016) applied; Shankar Khushalani and another v Lindsay Mason (Trading as Tropical Home Designs Architectural & Construction Services [2021] ECSCJ No. 593 (delivered 11th June 2021) applied; Webster Dyrud Mitchell (A partnership) et al v Jenny Lindsay AXAHC VAP2017/0001 (delivered 20th September 2021, unreported) considered; Michel Dufour and others v Helenair Corporation Ltd. and others [1996] ECSCJ No. 11 (delivered 12th February 1996) applied; JTrust Asia PTE v Mitsui Konoshita and others [2021] ECSCJ No. 571 (delivered 31st May 2021) applied; Ming Siu Hung and others v JF Ming and another [2021] UKPC 1 applied; Yates Construction Company Ltd. v Blue Sand Investments Limited BVIHC VAP2012/0028 (delivered 20th April, 2016, unreported) applied; Depraska v Cherney [2012] EWCA Civ 1235 applied; Khouly Construction Engineering Ltd v Edmond Mansoor [2021] ECSCJ No. 527 (delivered 15th April 2021) considered; Novel Blaze Limited (In Liquidation) v Chance Talent Management Limited [2021] ECSCJ No. 529 (delivered 9th July 2020) considered.

4. An award of costs is a matter within the discretion of a judge and the Court of Appeal will only interfere with an award if the judge's exercise of discretion exceeded the generous ambit within which reasonable disagreement is possible and is clearly or blatantly wrong. The judge showed fidelity to the established principle that a successful party is entitled to

costs and may only be deprived of its costs in limited circumstances such as dishonesty or misconduct. There was therefore no basis for the learned judge to disapply the established principle that costs follow the event. Consequently, the appeal is dismissed on this issue.

Throne Capable Investment v Agile Star Group Limited BVIHCMAP2020/0014 (delivered 14th January 2021, unreported) applied.

Case Name:

**Eliza Thompson
v
Catherine Thompson**

**[GDAHCVAP2021/0002]
(Grenada)**

Date:

Thursday, 10th February 2022

**Coram for
delivery of
judgment:**

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Deloni Edwards

Respondent:

Ms. Hazel B. Hopkin and Mr. Alban John

Issues:

Civil appeal – Land Law – Intestacy – Intestate Estates Act – Real Estate Devolution Act – Duty of administrator of estate - Deed of gift by administrator of estate – Interpretation of deed of gift - Whether administrator can gift property of unadministered estate – Whether the learned judge erred in awarding share of estate - Costs – Discretion of judge to award costs - General principle in awarding costs

Result:

Held:

1. The appeal is dismissed
2. The cross-appeal is allowed to the extent that paragraphs 2 and 3 of the order of the learned judge dated 17th November 2020 are set aside and replaced as follows:
“2. The share of Joseph Thompson in the estate of his mother, Petty Thompson, will devolve to his heirs in accordance with the provisions of his will (if he died testate) or the provisions of the Intestate Estates Act (if he died intestate).”

“3. The respondent is awarded prescribed costs in the court below in the amount of \$7,500.00, discounted by 30% to reflect the fact that she did not prevail on every argument.”
3. The respondent is awarded two-thirds of the discounted costs in the court below on the appeal, which amount will itself be discounted by 40%.
4. For the avoidance of doubt, the mathematical consequence of these costs awards is \$5,250.00 cost in the high court and \$2,100.00 in the Court of Appeal, yielding a total costs award to the respondent of \$7,350.00.

Reason:

A grant of letters of administration only empowers the administrator to administer the estate of the deceased in accordance with the laws of intestacy of the country. In Grenada, the laws of intestacy are contained in the Intestate Estates Act and the Real Estate Devolution Act. These Acts provide for the manner in which the estate of a person dying intestate devolves to his heirs and codify the common law principle that a personal representative of the estate of a deceased acts as a trustee for the persons beneficially entitled by law to any property of the deceased. Furthermore, where the estate of the deceased remains unadministered, no beneficiary has an interest in the estate's property. In this case, as evidenced by the operative clause of the deed of gift, Joseph purported to convey the land to the appellant in his representative capacity. As there

was no evidence that the one-sixth share of his mother's estate which he was entitled to on her intestacy was vested in him, Joseph could not convey it to the appellant either as grantor or as administrator of his mother's estate in furtherance of his love and affection for the appellant. The appeal is therefore dismissed on this issue.

The Intestate Estates Act, Cap. 154 of the Laws of Grenada applied; Section 4 of the Real Estate Devolution Act, Cap. 274 of the Laws of Grenada applied; Section 32 of the Conveyancing and Law of Property Act considered; Halsbury Laws of England 4th edn, vol. 17(2) applied; *Daphne Gumbs v Administrator of the Estate of James Fahie* [2020] ECSCJ No. 86 (delivered 6th March 2020) applied.

On the same basis that Joseph could not convey any part of his one-sixth share of the estate to the appellant, either as administrator or as grantor, he could not convey to the appellant all or any part of Robert's share in the land. The appellant's entitlement to any part of her deceased husband's share in the land must be determined by his will, if he died testate, or by the laws of intestacy, if he died intestate. The learned judge could not therefore have allocated a quarter acre of Robert's share in his mother's estate to the appellant, nor can this Court do so. The cross-appeal is accordingly dismissed on this issue.

It is a general principle that costs follow the event and a successful party to an action may only be deprived of his costs in very limited circumstances. Where a judge is minded to depart from this general rule, he ought to provide reasons for so doing. Upon a consideration of the appellant's claim in the court below and the fact that she was unsuccessful in that claim, there does not appear to be any basis for the learned judge to have departed from the general rule. The judge also failed to give reasons for his departure from the general rule. In the circumstances, the judge exceeded the generous ambit within which reasonable disagreement is possible and was clearly or blatantly wrong and the order in the court below that the parties bear their own costs must accordingly be set aside. The cross-appeal on costs is therefore allowed.

APPLICATIONS AND APPEALS

Case Name:

**In the Matter of the Estate of John Peter
Richardson
V
In the Matter of the Letters of Administration
and Probate Act RSA C L45
[AXAHCVAP2014/0002]
(Anguilla)**

Date:

Monday, 7th February 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: No appearance

Respondent: No appearance

Issues:

**Civil Appeal - Non appearance of parties - Appellant's
failure to prosecute appeal - Whether appeal ought to
be dismissed in light of appellant's failure to prosecute
appeal**

Type of Order

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed for want of
prosecution.**

Reason:

This is an appeal by Simeon Fleming against the decision of Mathurin J dated 28th January 2014 refusing an application by Mr. Fleming to overturn an order by the registrar of the high court of Anguilla. The notice of appeal against Mathurin J's ruling was filed on 4th March 2014 by Ms. Jenny Lindsay who had appeared for Mr. Fleming in the matter before Mathurin J. Since the filing of the notice of appeal, just short of 8 years ago, no steps have been taken by the appellant to progress the appeal. At a status hearing of the appeal on 14th July 2021, no one appeared on behalf of the appellant.

The chief registrar (ag.) fixed the hearing of the appeal for this week and ordered the registrar of the high court to serve a copy of the order of the chief registrar (ag.) and of the notice of hearing of the appeal on the appellant Simeon Fleming and on counsel on record for the appellant, Ms. Jenny Lindsay. On 4th August 2021, the office manager of the high court, Ms. Nadia Rouane, sent the order and notice to Mr. Fleming via DHL. On 20th August 2021, Ms. Rouane received an email notification from DHL showing that the correspondence containing the order and notice to Mr. Fleming was delivered to Mr. Fleming's address in the United Kingdom and signed by Mr. Fleming, as having received same.

On 17th August 2021, the office manager at the high court, Ms. Rouane, served Ms. Lindsay via email with the order of the chief registrar (ag.) and the notice of hearing. Receipt of the email was acknowledged by Ms. Lindsay on 18th August, 2021. The appellant has not appeared either in person or by counsel to prosecute the appeal today or at any other time in the nearly 8 years since filing the appeal.

Case Name:

- [1] National Bank of Anguilla (Private Banking and Trust) Limited (in administration)**
- [2] Caribbean Commercial Investment Bank Limited (in administration)**

V

- [1] Chief Minister of Anguilla**
[2] Attorney General of Anguilla (sued as the legal representative of the Government of Anguilla/Executive Council)
[3] Gary Moving as receiver of National Bank of Anguilla Limited (in receivership) and Caribbean Commercial Bank (Anguilla) Limited (in receivership)
[4] Eastern Caribbean Central Bank

**[AXAHCVAP2020/0001]
(Anguilla)**

Date: Monday, 7th February 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Applicants: Mr. Ronald Scipio, QC with him Mrs. Eustella Fontaine

Respondents: Dr. Francis Alexis, QC with him Mrs. Nakishma Rogers-Hull for the 1st and 2nd respondents
Ms. Navine Fleming for the 3rd and 4th respondents

Issues: Application for conditional leave to appeal to the Judicial Committee of the Privy Council - Article 3(1)(a) of the Anguilla (Appeals to Privy Council) Order 1983 - Whether the appeal lay as of right to the Privy Council - Whether the decision of the Appeal Court was a final decision which involved indirectly a question respecting property or a right of a value of 300 pounds sterling or upwards - Article 3(2)(a) of the 1983 Order - Whether leave to appeal to the Privy Council ought to be granted - Whether the question involved in the appeal was one that by reason of its great general or public importance ought to be submitted to the Privy Council

Type of Order

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellants/applicants are hereby granted conditional leave to appeal to the Judicial Committee of the Privy Council from the decision of the Court of Appeal delivered on 30th July 2021.**
- 2. The appellants/applicants shall within 90 days of the date of this order enter into good and sufficient security in the sum of £500.00 for the due prosecution of the appeal and the payment of all such costs as may become payable by the appellants/applicants in the event of them not obtaining an order granting them final leave to appeal or in the event of the appeal being dismissed for non-prosecution or in the event of the Privy Council ordering them to pay the costs of the appeal.**
- 3. The appellants/applicants shall within 120 days of the date of this order take the necessary steps to settle the record with the respondents' lawyer and to prepare and file the record with the chief registrar of the Court of Appeal.**
- 4. The parties shall abide by rules 18 and 20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and its practice directions 4 and 5 and the record shall be transmitted to the registrar of the Judicial Committee without delay once final permission to appeal has been granted.**
- 5. The appellants/applicants shall within 21 days from the date on which the record is filed with the chief registrar of the Court of Appeal, make application to the Court for final leave to appeal to the Judicial Committee of the Privy Council supported by the certificate of the registrar of the high court or chief registrar of the Court of Appeal of payment of security for costs of the prosecution of the appeal as described in this order.**

6. The costs of and occasioned by this notice of motion be costs in the cause to abide by the result of the Appeal.
7. Each party be at liberty to apply.

Reason:

By notice of motion, the appellants moved the Court for conditional leave to appeal to the Judicial Committee of the Privy Council against the order of the Appeal Court dated 30th July 2021, except as to costs. The motion for leave to appeal was opposed by the 1st and 2nd respondents, namely, the Chief Minister and Attorney General. The motion was made pursuant to article 3(1)(a) of the Anguilla (Appeals to Privy Council) Order 1983 (“the 1983 Order”), alternatively, pursuant to article 3(2)(a) of the said Order.

Article 3(1)(a) provides that an appeal shall lie as of right to the Privy Council from (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the value of 300 pounds or upwards or (b) where the appeal involves directly or indirectly a claim to or question respecting property or a right of a value of 300 pounds sterling or upwards. Article 3(2) provides for an appeal from decisions of the court to Her Majesty in Council, with leave of the court, in the following cases (a) decisions in any civil proceedings where in the opinion of the court the question involved in the appeal is one that by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council.

The appellants submitted that the appeal was as of right from a final decision in civil proceedings which involves directly or indirectly a claim to or question involving property or a right of a value of 300 pounds sterling or upwards. In the alternative, they argued that it was an appropriate case to grant conditional leave as the questions involved in the intended appeal were, by reason of their great general or public importance, or otherwise, appropriate for submission to the Judicial Committee of the Privy Council.

The short background to this matter is that there was a plan to protect customer deposits and provide a resolution to financial threats then confronting Anguilla. The Government of Anguilla and the Eastern Caribbean Central Bank (“ECCB”) finalized a resolution plan for Anguilla. The plan essentially entailed (1) the transfer of assets and liabilities of each parent bank up to a maximum of 2.6 million dollars to a new domestic bank, National Commercial Bank of Anguilla (“NCBA”) and (2) the creation of two Deposit Protection Trusts (“DPTs”), one for each parent bank. The DPTs were funded by the Government of Anguilla. The Chief Minister of Anguilla informed the public of the resolution plan and commended it as a policy designed to protect the holders of deposits at the parent banks from losses.

The appellants, being dissatisfied with certain aspects of the implementation of the resolution plan filed an application for judicial review of decisions purportedly made by the Government [and the bank regulatory officials] which they claimed deprived them of certain protections. Essentially, they complained that though they were large depositors of the parent banks and agreed to the assurance held out to them by the ECCB and the Chief Minister, their deposits had been wrongfully and unlawfully excluded from transfer to the NCBA and to the DPTs and from protection under the resolution plan by what they claimed to be the unlawful decisions of the Chief Minister and the ECCB and sought judicial review of the decisions.

The judge dismissed the application for judicial review. The Appeal Court also dismissed an appeal from that judge, thus prompting the present motion for conditional leave to appeal to Her Majesty in Council. To strengthen their contention, the appellants argued that the matter in dispute is the decision to exclude their deposits from protection under the plan and the DPTs. These deposits amount to millions of dollars they contend, far in excess of the value threshold. They point out that the proceedings are civil proceedings. The dispute is a decision to exclude the appellants’/applicants’ deposits of US \$60,171,605.00 from the benefit under the resolution plan.

In opposing the motion, counsel for the Chief Minister and the Attorney General asserted that the application before the judge had no monetary value. That is the test not the sheer size of the property in issue and the extent if any it passes the value threshold. On that basis, counsel submitted that the appellants had no basis to seek to appeal as of right with respect to property or a right with a value of 300 pound sterling or upwards, within the meaning of Article 3(1)(a) of the 1983 Order.

The Court, having read the submissions of both sides and having heard extensive oral arguments, was of the view that the applicants had satisfied the requirement of an appeal as of right to the Judicial Committee of the Privy Council pursuant to Article 3(1)(a) of the 1983 Order. Having considered the learning in the cases of Jackpot Ltd. v Gambling Regulatory Authority [2018] UKPC 16 and the decision of the appeal court of the Cayman Islands in Essar Global Fund Limited and Another v Arcelormittal North America Holdings LLC (Cayman Islands) CICA (Civil) Appeal 15 of 2019, the Court was of the opinion that the appellants had a right to appeal to the Judicial Committee of the Privy Council, since the decision of the Appeal Court was a final decision which involved indirectly a question respecting property or a right of a value of 300 pounds sterling or upwards. The matter in dispute is the decision to exclude the appellants' deposits from protection under the resolution plan and the DPTs.

These deposits, the appellants contended, amount to millions of dollars in excess of the value threshold. In light of the Court's decision on that ground it was not necessary to consider the grounds of great general or public importance or otherwise.

Case Name:

Allin Durand
v
The Superintendent of Prisons

[AXAHCVAP2021/0005]
(Anguilla)

Date: Monday, 7th February 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Merlanih Lim

Respondent: Mr. Sasha Courtney

Issues: Application to set aside the order of a single judge - Refusal of leave to appeal - Misapplication of Civil Procedure Rules 62.2 and 62.2(5) of Civil Procedure Rules 2000 - Rule 62.16(A)(1) of Civil Procedure Rules - Whether order of single should be revoked on the basis that the order was made without jurisdiction - Extension of time to file appeal - Whether an extension of time should be granted to the applicant to file an application for leave to appeal - Whether the Court should exercise its discretion afresh to consider application for leave to appeal

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The order of the single judge dated 28th September 2021 is revoked.
2. The application for an extension of time is dismissed.
3. The application for leave to appeal is consequently dismissed.

Reason: The order of the single judge was made on 28th September 2021 refusing an application by the applicant for leave to appeal the judgment and order of Henry J dated 21st May 2021. The specific order of the single judge was 'leave to appeal the order and

judgment of Henry J dated 21st May 2021 is refused.’ Rule 62.2 of the Civil Procedure Rules 2000 provides that an application to the Court of Appeal for leave to appeal a judgment or an order of an inferior court may be considered by a single judge of the court. The rule further provides that the single judge may grant leave without hearing the applicant. It provides further that if, however, the single judge is minded to refuse leave, he or she must direct that a hearing be fixed and whether the hearing is to be by a single judge or the full Court.

The learned single judge did not fix a hearing either before a single judge or before the full Court, before refusing leave to appeal. This decision was not in accordance with the rules and an application was made by the applicant in accordance with 62.16(A)(1) of the CPR, seeking an order from this Court to revoke the order of the single judge. In those circumstances the order of a single judge was revoked as having been made outside the powers of a single judge under CPR 62.16(A)(1).

Having revoked the order of the single judge, the Court went on to consider the applicant’s application for an extension of time for leave to appeal. The Court found that there was no evidence filed with the Court, so as to satisfy any of the factors to be considered in determining an application for an extension of time. Counsel for the applicant conceded that the application for an extension of time was made 4 months after the application for leave to appeal was filed, which application for leave to appeal was itself filed out of time. Counsel for the applicant also conceded that the applicant had not put before the Court any evidence as to the reason for the late filing of the application for an extension of time. Furthermore, the affidavit in support of the application did not address the essential question of the prospect of success of the appeal, should the extension of time be granted and leave to appeal also be granted. The affidavit also did not address the issue of prejudice to the respondent if the extension of time was granted to the applicant. The Court also took into consideration that the appeal concerned the judge’s exercise of case management powers under CPR 26.9 and took into

consideration the reasons given by the learned judge in her oral ruling regularizing the filings by the respondent of further submissions and additional authorities and also a notice of application to cross examine the applicant and his witness.

The Court, upon considering that the judgment addressed the case management powers of the judge, held that in all the circumstances, an application for extension of time should not be granted and the application was accordingly dismissed. With the dismissal of the application for extension of time, the application for leave to appeal having been made out of time and no extension of time granted for the filing of the application for leave to appeal, therefore fell away automatically.

Case Name:

**Pamela Riley
v
National Bank of Anguilla
[AXAHCVAP2021/0007]
(Anguilla)**

Date:

Monday, 7th February 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Applicant: Ms. Merlanih Lim

Respondent: Ms. Jacinth Jeffers

Issues:

Application to set aside order of single judge - Rule 62.16A of Civil Procedure Rules - Jurisdiction of single judge to refuse leave to appeal - Rule 62.2(5) of Civil Procedure Rules - Whether single judge erred in refusing application for leave to appeal on basis that

application made out time and there being no application for extension of time - Whether or not leave to appeal was required - Whether judgment was interlocutory or final - Rule 62.1 of Civil Procedure Rules

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The order of the single judge dated 28th September 2021 is revoked.
2. The decision of Innocent J delivered on 6th July 2021 in Claim No. 15 of 2021 Pamela Riley v National Bank of Anguilla (in receivership) is a final decision and no leave was required to appeal from that decision.
3. The applicant shall file, within 14 days from today's date, a notice of appeal against the said decision.
4. Thereafter, the appeal shall follow the applicable rules set out in the Civil Procedure Rules 2000.
5. There is no order as to costs.

Reason:

Before the Court was an application by the applicant Pamela Riley to revoke an order made by a single judge of this Court on 28th September 2021 to refuse leave to the applicant to appeal the judgment of Innocent J made on 6th July 2021. The order of the single judge, as indicated, was made on 28th September 2021 and specifically ordered that 'leave to appeal the order and judgment of Innocent J dated 6th July 2021 is refused.' In accordance with rule 62.2 of the Civil Procedure Rules 2000 leave to appeal the judgment and order of the lower court, application for which is made to the Court of Appeal, may be considered by a single judge of the Court of Appeal. The single judge may grant leave without hearing the applicant. If, however, a single judge is minded to refuse leave, he or she has to direct that a hearing be fixed and whether the hearing is to be by a single judge or by the Court. This, in effect, means that a single judge of the Court does not have the jurisdiction to

refuse an application for leave to appeal without a hearing of the application. The learned single judge did not therefore have the jurisdiction to make the order refusing leave, absent a hearing of the application and her order in that regard is therefore revoked.

Having ruled that the order of the single judge dated 28th September 2021 is set aside, that left, for the Court's consideration, the other limbs of the applicant's application filed on 5th October 2021. In that application, the applicant sought to advance that the application for leave to appeal which was uploaded and submitted to the E-portal on 30th July 2021 but electronically endorsed as filed on 3rd August 2021 was properly filed by the applicant in compliance with the Civil Procedure Rules 2000, specifically CPR 62.2(1) and, that leave to appeal the decision of Innocent J delivered on 6th July 2021 ought to be granted.

Alternatively, the applicant sought an order that any non-compliance with the rules of court, including any application to extend time ought to be waived. In that regard, the Court noted specifically that in the application for leave to appeal which came before the single judge for consideration having been filed on 3rd August 2021, the applicant also sought relief from sanctions for any non-compliance with the deadline for the filing of the said application for leave to appeal pursuant to rule 62.2 of the CPR should the court deem it necessary for the appellant to seek such leave. In the skeleton argument filed on behalf of the applicant, the applicant also submitted that no leave was required as the decision of the learned judge below was not an interlocutory decision or an interlocutory order. That particular submission was not developed in any detail in the written submissions but was nevertheless relied on by learned counsel in oral submissions before the Court.

The Court considered the submissions of counsel for the applicant in relation to that specific issue of whether the decision of Innocent J was interlocutory or final and heard learned counsel for the respondent in response to that issue and submissions. The Court

was also mindful of the specific provisions at CPR 62.1(3) which provides that in determining whether a judgment or order is final or interlocutory, this is made on the basis of the application test. Indeed, this has been quite a long settled matter in the jurisprudence of the Court and has been enshrined in the Civil Procedure Rules. Sub-paragraph (b) goes on to state: ‘an order or judgment is final if it would be determinative of the issues that arise on a claim whichever way the application could have been decided.’

In the instant matter, the singular issue in proceedings before the high court was the question of whether the statutory stay of proceedings imposed by section 143 of the Banking Act, 2015 ought to be lifted to permit the applicant to proceed with proceedings before the Labour Tribunal by which the applicant made claims against the respondent bank, (now in receivership), for wrongful dismissal and unfair dismissal. As such, the sole proceedings and issue before the high court for its determination concerned the question of whether the statutory stay ought to be lifted.

The learned judge, in his decision, refused the application to lift the statutory stay. In the Court’s considered view, the decision of the learned judge was not an interlocutory one but a final decision because it was determinative of the sole issue before the court whichever way the learned judge had decided the said application. Accordingly, it was the determination of the Court that no leave was required to appeal the decision of the learned judge of the high court. Having made that ruling, the Court was not required to go on to consider the other limbs of the applicant’s application.

Case Name:

Palmavon J. Webster

v

[1] WDM Limited

[2] John O. Dyrud (as a shareholder of WDM Limited)

[AXAHCVAP2021/0002]

(Anguilla)

Date: Tuesday, 8th February 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Tana’ania Small Davis QC

Respondents: No appearance for the 1st respondent
Ms. Jean M. Dyer with Ms. Liska Hutchinson for the 2nd respondent

Issues: Civil Appeal - Whether the Judge would have made the Order for the winding up of the company WDM Limited if he had been properly guided - Corporate winding-up proceedings in Anguilla - Rule 2.2(3)b Eastern Caribbean Supreme Court Civil Procedure Rules 2000 - Section 27 Eastern Caribbean Supreme Court (Anguilla) Act - Rule 12.61(1) and Rule 12.61(2) of Chapter 10 of the Insolvency (England and Wales) Rules 2016 - Rule 12.1 of Chapter 1 of the Insolvency (England and Wales) Rules 2016 - Paragraph 4 of Section II of Practice Direction 52C (Appeals to the Court of Appeal) supplanting CPR Part 52 of the UK Civil Procedure Rules - J F Ming Inc. et al v Ming Siu Hung, Ronald et al BVIHCMAP2016/0039 - Chu Kong v Lau Wing Yan et al BVIHCVAP2017/0020 – Whether the learned judge erred in exercising his discretion to wind up WDM Limited on the just and equitable ground - Wang and others v Union Zone Management Ltd & Others BVIHCMAP 2013/0024 - Whether a liquidator should have been appointed for the purpose of dissolving WDM Limited in accordance with the provisions of the Companies Act C65

Type of Order: N/A

Result / Order: [Oral Delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name: **Palmavon J. Webster**
v
[1] Sea Island Realities Limited
[2] John O. Dyrud (as a shareholder of Sea
Island Realities Limited)

[AXAHCVAP2021/0003]
(Anguilla)

Date: **Tuesday, 8th February 2022**

Coram: **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Sydney Bennett, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Ms. Tana’ania Small Davis QC
Respondents:	No appearance for the 1st respondent Ms. Jean M. Dyer with Ms. Liska Hutchinson for the 2nd respondent

Issues: **Civil appeal - Winding up order - Whether the winding up order was just and equitable - Whether there was evidence before the court that it was just and equitable to wind up Sea Island Realities Limited - Whether the learned judge erred in the exercise of his discretion in ordering the winding up of Sea Island Realities Limited - Whether the learned judge erred in finding a functional deadlock between the parties as it pertains to Sea Island Realities Limited - Whether the learned judge erred in ordering the winding up when there was no evidence that the breakdown between the parties meant that Sea Island Realities Limited was unable to carry out company affairs - Whether the learned judge erred in finding that there was a frustration of purpose**

Type of Order: N/A

Result / Order: [Oral Delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name: Cable and Wireless
v
Avonelle Caragliano
[AXAHCVAP2021/0006]
(Anguilla)

Date: Wednesday, 9th February 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Jean M. Dyer and Ms. Liska Hutchinson
Respondent: Ms. Tona Simpson Whyte

Issues: Interlocutory appeal - Expert evidence - Part 32 of the Civil Procedure Rules 2000 - Whether witness (Dr. Gill) was competent to give medical evidence - Exercise of judicial discretion - Case management powers - Whether judge exercised his discretion improperly in granting respondent permission to call witness as medical expert evidence - Section 26 of the Medical Act - Whether section 26 operated to prevent witness' ability to testify as a expert on medical matters - Costs - Quantum of costs - Whether judge erred in his assessment of costs

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal stands dismissed.**
- 2. Costs are awarded to the respondent in the appeal in the sum of two-thirds of the costs in the court below.**

Reason:

This was an interlocutory appeal filed on 19th October 2021 by the appellant, Cable and Wireless (Antigua) Limited doing business as FLOW, against the judgment and order of a judge of the high court delivered on 8th July 2021 granting an application filed by the respondent to adduce expert evidence of Dr. Gill. The notice of appeal sets out a number of grounds upon which the appellant relied in seeking to set aside the exercise by the learned judge of his discretion and the case management order made by the learned judge in the exercise of that discretion.

Having considered the written and oral submissions of learned counsel for the appellant, and having considered the written submissions of learned counsel for the respondent and counsel for the respondent's oral submissions on the specific issue of the quantum of costs of \$500.00 awarded to the appellant by the learned judge, and for the reasons which were made clear during the course of the hearing of the appeal in response, particularly, to the submissions of learned counsel for the appellant, it was the unanimous view of the Court that there was no merit in the appeal on any of the grounds of appeal relied on by the appellant.

On the issue of costs, specifically, the quantum of costs which the learned judge awarded, in light of the absence, on the record, of any submissions to the learned judge on costs and bearing in mind the principles by which a judge exercises his or her discretion not only to award costs but in terms of the

quantum of costs, this Court found no basis upon which to disturb the award of \$500.00 in the court below in favour of the appellant.

Case Name: Jamila Aliena William
v
The Commissioner of Police
[AXAMCRAP2015/0002]
(Anguilla)

Date: Wednesday, 9th February 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Dawn Cush
Respondent: Ms. Erica Edwards

Issues: Adjournment

Type of Order: Adjournment

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The matter is adjourned to the next sitting of the Court of Appeal for the territory of Anguilla during the week commencing 4th July 2022.

Reason: The Court was informed that counsel for the appellant was not possessed of a valid practicing certificate

pursuant to the Legal Profession Act 2016, at the time of the sitting. The Court was therefore of the view that the matter should be adjourned to the next sitting of the Court in Anguilla, so that counsel for the appellant could obtain the requisite practicing certificate.

Case Name:

**John Dyrud
v
[1] Palmavon Webster
[2] First Anguilla Trust Company Limited

[AXAHCVAP2021/0010]
(Anguilla)**

Date:

Thursday, 10th February 2022

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Ms. Jean M. Dyer and Ms. Liska Hutchinson

**Respondents: Mrs. Tana'ania Small Davis, QC for the 1st respondent
No appearance for the 2nd respondent**

Issues:

Interlocutory appeal - Expert evidence - Rule 32.9 of Civil Procedure Rules - Court's power to make orders of its own initiative - CPR 26.2 - Exercise of judicial discretion - Whether or not expert evidence was required - Whether judge erred in making an order of own volition in appointing a single expert in relation to the valuation of shares - Procedural irregularity - CPR Part 29 - Whether judge erred in granting leave at large to 1st respondent to amend the witness statement of Christopher Horne - Whether learned judge's self direction as it relates to the relevant law was flawed - Whether learned judge's assessment of weight irrational

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved

Case Name: **Palmavon Webster**
v
[1] John Dyrud
[2] First Anguilla Trust Company Limited
[AXAHCVAP2021/0011]
(Anguilla)

Date: Thursday, 10th February 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mrs. Tana'ania Small Davis, QC
Respondents:	Ms. Jean M. Dyer and Ms. Liska Hutchinson for the 1st respondent No appearance for the 2nd respondent

Issues: Interlocutory appeal - Expert evidence - Part 32 of the Civil Procedure Rules - Exercise of judicial discretion - Whether judge erred in dismissing appellant's application for an extension of time to permit the deployment of expert evidence - Whether judge erred in refusing the extension of time on the basis that it was made too late when there were 10 weeks between the hearing of the application and the trial dates - Whether judge erred in concluding that no expert necessary as it pertains to the financial affairs of the 2nd respondent - Whether judge erred in failing to

direct another expert be selected - Whether judge erred in assessing whether Christopher Horne's witness statement was compliant with CPR Part 32

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved

Case Name: Carl Webster
v
[1] Historic Beacon Point Anguilla Ltd
[2] Ronda Hodge
[AXAHCVAP2020/0020]
(Anguilla)

Date: Friday, 11th February 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Sydney Bennett, QC, Justice of Appeal
[Ag.]

Appearances:
Appellant: Mr. Devin Hodge
Respondents: Ms. Paulette Harrigan

Issues: Civil appeal - Damages for personal injuries - Quantum of damages - Special Damages - Damages for loss of earnings - Loss of earnings not set out in schedule of special damages - Rule 8.9 of the Civil Procedure Rules 2000 - Whether learned judge erred in awarding damages to the claimant for loss of future earnings

when they failed to specifically plead such loss in their statement of claim and claim form - No evidence of claimants mitigating loss - Lack of evidence of pecuniary loss - Whether learned judge erred in the exercise of his discretion by estimating the award of damages for loss of earnings when such an award requires specific pleadings and strict proof - Whether award to claimants for loss of earnings wholly disproportionate - General Damages - Damages for loss of future earnings - Multiplicand - Whether learned judge erred by relying on erroneous and arbitrary sums derived from the annual loss of earnings to the claimants and by using those sums as the basis for establishing a multiplicand - Multiplier - Whether learned judge erred in establishing a multiplier as high as six (6) years for the computation of an award of loss of future earnings - No evidence in relation to the number of years it is anticipated the second-named claimant's disability would last - Second-named claimant 53 years of age and suffering from serious degenerative diseases at time of award - Whether learned judge erred in his computation of the sums awarded for loss of future earnings by failing to state with any specificity the nature and extent of any apportionment to the defendant for such loss - Whether learned judge erred in the exercise of his discretion in making an award for future loss of earnings by failing to include a discount or allowance for the payment of taxes and other related business fees which should have been deducted from the lump sum awards - Damages for pain and suffering and loss of amenities - Whether learned judge misdirected himself by relying on the evidence of Dr. James Nelson at paragraphs 230 to 235 of the judgment, for a determination of damages for pain, suffering and loss of amenities - Lack of medical or other evidence from which a proper assessment could be made of the resulting physical disability to the second-named claimant - Expert evidence - Failure by claimants to comply with CPR Part 32 - Whether judge erred in

exercise of his discretion by relying on Dr. Nelson's evidence and awarding damages in respect of pain and suffering, loss of amenities based on erroneous estimates of the loss suffered

Counter appeal - Damages for Nuisance - Loss of amenity - Whether the learned judge erred in the exercise of his discretion in failing to award a modest sum for loss of amenity - Whether sum awarded by learned judge for nuisance wholly unreasonable and inconsistent with case law

Type of Order:

N/A

Result / Order:

[Oral delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**