

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

SAINT VINCENT AND THE GRENADINES
11th – 15th January 2021

JUDGMENTS

Case Name: Lux Locations Limited

V

Yida Zhang

[ANUHCVAP2020/0025]
[Antigua and Barbuda]

Date: Monday, 11th January, 2021

Coram for delivery of judgment: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Thomas Roe, QC with Mr. Andrew O’Kola
Ms. Nadia Dyson as representative of Lux Locations Limited

Respondent: Mr. Barry Gale, QC

Issues:

Civil appeal – Application to strike out notice of appeal – Default judgment – Section 31(1) of the Eastern Caribbean Supreme Court Act – Whether a defendant against whom default judgment has been granted has a right of appeal pursuant to section 31(1) of Eastern Caribbean Supreme Court Act – Nature of default judgment – Whether a default judgment is a judgment or order of the High Court – Rules 12.7, 12.4, 12.5 12.10(4) and 12.10(5) of the Civil Procedure Rules 2000 – Claim for ‘some other remedy’ – Default judgment an administrative act performed by court office –

Default judgment not a judgment or order of the High Court within meaning of section 31(1) of Eastern Caribbean Supreme Court Act

Result / Order:

Held: striking out the notice of appeal and awarding costs to the respondent in the sum of two-thirds of the costs awarded by the court below, that:

- 1. In the case of a default judgment for ‘some other remedy’, rules 12.7 and 12.4 or 12.5 and of the CPR must be satisfied. Further, these provisions must be read in conjunction with rules 12.10 (4) and (5) and 12.13 of the CPR. The effect of rules 12.7, 12.4 or 12.5, 12.10(4) and (5) read conjointly with rule 12.13(b) of the CPR is that a claimant who wishes to obtain judgment in default where the claim is for ‘some other remedy’ must file a request in Form 7 at the court office. If the conditions outlined in rule 12.4 or 12.5 of the CPR are satisfied, the court office must enter judgment in default with the terms of the judgment to be determined by the court. The claimant must then make an application to the court, supported by affidavit evidence, to determine the terms of the judgment pursuant to rules 12.10(4) and (5). The court will then determine the terms of the judgment or in other words, the relief(s) to be granted.**

Rules 12.4, 12.5, 12.7, 12.10(4) and (5) and 12.13 of the Civil Procedure Rules 2000 applied.

- 2. The grant of default judgment is an administrative act performed by the court office. While in the case of a default judgment for an unspecified sum of money and a default judgment for ‘some other remedy’, there are some further steps to be taken before the court, such as the assessment of damages or determining the remedy to be granted, the default judgment remains an administrative order and not a judicial order. In assessing damages or determining the remedy to be**

granted, the court does not, in any way, examine the merits of the claim.

Rules 12.10(2) and 12.10(4) of the Civil Procedure Rules 2000 applied.

3. By virtue of section 31(1)(b) of the Supreme Court Act, the Court of Appeal has jurisdiction to hear and determine appeals from any 'judgment or order of the High Court'. In interpreting this phrase, a plain and ordinary meaning must be adopted. A default judgment, being an administrative act and not a judicial decision, should not be considered a judgment or order of the High Court within the meaning of section 31(1)(b). A defendant who is dissatisfied with a default judgment must seek to set it aside pursuant to Part 13 of the CPR. Further, a judgment in default cannot be set aside on appeal where the appeal is against the assessment of the damages. Default judgment, having been granted, the learned judge was not required to consider and could not make any findings on issues relating to liability such as the issue of striking out of the statement of case or summary judgment.

Evans v Bartlam [1937] A.C. 473 applied; Strachan v The Gleaner Newspapers [2005] UKPC 33 applied; Dipcon Engineering Ltd v Bowen [2004] UKPC 18 applied; Alpine Bulk Transport Company Inc v Saudi Eagle [1986] 2 Lloyd's Rep. 221 applied; Section 31(1)(b) of the Eastern Caribbean Supreme Court Act Cap. 143 of the Laws of Antigua and Barbuda applied; Section 4 of the Eastern Caribbean Supreme Court Order 1967 (S.I. 1967 No. 223) applied.

4. The filing of a defence or amended defence after the filing of request by the claimant for judgment to be entered for failure to defend, will not avail a defendant. In this present matter, Lux Location Ltd's filing of its application to extend time to file a defence, application to strike out the claim and summary judgment after Mr. Yida's application for default judgment, was not a bar to the grant

of default judgment. It was of no moment once the conditions for the grant of a default judgment were satisfied under rule 12.5 of the CPR. It follows that any findings in the judgment of the learned judge pertaining to Lux Locations Ltd's applications are not binding on the parties.

Rolle v Lander DOMHCVAP2013/0025A (delivered 20th October 2020, unreported) applied; Attorney General v Keron Matthews [2011] UKPC 38 applied.

Case Name:

**[1] BBL Limited
[2] Irina Savelieva
v
[1] Canouan Resorts Development Limited
[2] Canouan Realty Limited**

**[SVGHCVAP2019/0006]
(St. Vincent and the Grenadines)**

Date:

Tuesday, 12th January, 2021

**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:

Appellants: Mr. Keith Scotland with Ms. Maia Eustace

Respondents: Mr. Joseph Delves for the First Respondent

**Mr. Joseph Delves holding for Mr. Grahame Bollers for the
Second Respondent**

Issues:

**Interlocutory appeal — Appeal from refusal of application
for relief from sanctions and extension of time to comply
with unless order — Failure to file witness statements in
compliance with unless order — Application for extension
of time and relief from sanctions made before sanction**

took effect — Whether learned judge erred in dealing with application as one for relief from sanctions and not for extension of time — Whether application made before sanction takes effect ought properly to be for an extension of time or for relief from sanctions — Rules 26.1(2)(k) and 26.8 of Civil Procedure Rules 2000 — Considerations for grant of an extension of time — Length of delay — Reasons for delay — Prejudice to respondents — Chances of success

Result / Order:

Held: allowing the appeal; setting aside the order of the learned judge dated 16th November 2018; granting the appellants' application to extend the time for filing the witness statements; deeming the witness statements properly filed; ordering the appellants to serve the witness statements on the legal practitioners for the respondents within 7 days of the delivery of this judgment following which the parties shall exchange witness statements; ordering the appellants to pay the respondents' costs of the application and hearing below, to be assessed by a judge or master of the court, if not agreed within 21 days; and ordering the appellants to pay the respondents' cost in the appeal to be assessed by a judge or master of the court, if not agreed within 21 days, that:

- 1. The court has wide case management powers. These include the power pursuant to CPR 26.1(2)(k) to extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed and to take any step, give any direction, or make any other order for the purpose of managing the case and furthering the overriding objective pursuant to CPR 26.1(2)(w). On the other hand, CPR 26.7 and 26.8 provide that where a party has failed to comply with a rule, direction or order which specifies a sanction for non-compliance, that sanction takes effect unless the party in default applies for and obtains relief from the sanction. As to the timing of the application for relief from sanctions, the rules do not differentiate between circumstances where the application for relief from sanction is filed before or after the sanction takes effect. However, it is pellucid that rule 26.8 of the CPR applies only**

where a sanction has already taken effect.

Rules 26.1(2), 26.7 and 26.8 of the Civil Procedure Rules 2000 considered.

2. An application to extend the time for compliance with an order, practice direction or rule which specifies a sanction for non-compliance (including an unless order) made prior to the expiration of the stipulated time for compliance, falls to be considered by the court pursuant to CPR 26.1(2)(k) and the overriding objective, and not CPR 26.8 pertaining to relief from sanctions. This is so even where the application is not heard and determined by the court until after the time stipulated in the order, practice direction or rule for the sanction to take effect. It cannot be correct as a matter of principle, nor is it just and in keeping with the overriding objective of the CPR, for an application for extension or variation of an order (including an unless order), filed before the expiry of the date upon which the sanction would take effect and which, if heard before a sanction bites, would be governed by CPR 26.1(2)(k) and the overriding objective, to be somehow transformed into or treated in accordance with the more stringent requirements of CPR 26.8(2) applicable to relief from sanctions, simply because the court is unable to deal with the application prior to the expiration of the time stipulated for compliance or prior to the sanction taking effect. In this case, the appellants' application for extension of time and relief from sanctions, having been filed before the sanction took effect, therefore fell to be determined as an application for an extension of time. The learned judge accordingly erred in treating with the application as one for relief from sanctions and the basis upon which the learned judge exercised her discretion was plainly wrong.

Adam Bilzerian v Gerald Lou Weiner and Kathleen Ann Weiner [2016] ECSCJ No. 9, delivered 27th January 2016 considered; Vanroy Romney v Sheridan Smith AXAHCVAP2015/0002 [2016] ECSCJ No. 149, delivered 14th September 2016 applied; Everwarm Limited v BN Rendering Limited

[2019] EWHC 2078 (TCC) followed; Robert v Momentum Services Ltd [2003] EWCA Civ. 299 considered; Kaneria v Kaneria [2014] EWHC 1165 (Ch) considered; Hallam Estates Ltd. V Teresa Baker [2014] EWCA Civ 661 considered; Nilon Limited and another v Royal Westminster Investments SA [2015] UKPC 2 applied.

3. The court has a wide discretion to extend the time to comply with any order, rule or practice direction, and to do so even where the application to extend time was made after the time for compliance has expired. This discretion is not to be exercised in a vacuum, but in accordance with well-established principles, and with a view to giving effect to the overriding objective. It is trite that in determining an application to extend time or to vary the time imposed in an order of the court for compliance, the court must consider the following factors which are not exhaustive: (i) the length of the delay, (ii) the reasons for the delay, (iii) any prejudice to the respondent; and (iv) whether the applicant's pleaded case is, in any event, a hopeless one – the chances of success.

Carleen Pemberton v Mark Brantley [2011] ECSCJ No. 229, delivered 14th October 2011 applied.

4. While there is not much to commend the cogency and persuasiveness of the appellants' reasons why they would not have been in a position to comply with the unless order, this Court must take a broad view of the appellants' application and evidence in determining whether it ought, in the exercise of its discretion *de novo*, to permit the extension sought by the appellants. In doing so, the Court took into account that (i) no trial date had been fixed at the time, and therefore a further extension of time for the appellants to comply with the unless order would have had no impact on any trial date; (ii) there are profound consequences to be visited upon the appellants if an extension of time for compliance with the unless order is not granted; (iii) the promptitude with which the appellants applied to the court to extend time (i.e. before the stipulated time expired); and (iv) that the respondents themselves had failed to comply with

previous orders of the High Court in this matter, and only complied when the unless order was made. In all the circumstances, the justice of the case requires that this Court grants the appellants' October 2018 application to extend the time stipulated in the unless order for the appellants to file and exchange witness statements.

Case Name: **Throne Capable Investment Limited**

v

Agile Star Group Limited

**[BVIHCMAP2020/0014]
(Territory of the Virgin Islands)**

Date: **Thursday, 14th January, 2021**

Coram for delivery of judgment: **The Hon. Mde. Louise Esther Blenman, 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: **Ms. Daisy Bovingdon**

Respondents: **Mr. Jerry Samuel**

Issues: **Commercial appeal – Exercise of judicial discretion – Costs – Rules 64.6(5) and (6) of the Civil Procedure Rules 2000 – Appellate court's interference with judge's discretion to award of costs – Refusal of costs upon successfully resisting application to appoint liquidators – Whether the judge erred as a matter of principle in refusing to award the appellant costs despite having successfully resisted liquidation application – Costs follow the event – Whether failure to set aside statutory demand was sufficient basis to justify departure from general rule that costs follow the event**

Result / Order: **Held: allowing the appeal; setting aside the costs order of the learned judge and ordering that Throne is entitled to**

its costs on the liquidation application, to be assessed by a judge of the Commercial Court, if not agreed within 21 days of the date of this order; and awarding Throne its costs on the appeal, being no more than two-thirds of the costs in the court below, that:

1. The award of costs is a matter within the discretion of the judge. This discretion, like any other discretion, must be exercised judicially and on cogent reasons connected with the case. The general principle is that a successful party is entitled to its costs. A successful party, however, may be deprived of its costs, as a departure from the general rule, but only in restricted circumstances. These circumstances include where there is some misconduct, or misguided or dishonest conduct by the successful party, like an omission to take some step which ought to have been taken, and which could have saved costs.

Rule 64.6 of the Civil Procedure Rules 2000 considered; *Rochamel Construction Limited v National Insurance Corporation* Civil Appeal No. 10 of 2003 (delivered 24th November 2003, unreported) followed; *Donald Campbell & Co Ltd v Pollak* [1927] AC 732 considered; *Kierson v Joseph L Thompson & Sons* [1913] 1 KB 587 considered; *Re Fernforest Ltd* [1991] BCC 680 distinguished.

2. An appellate court may interfere with the exercise of the discretion in relation to costs where the judge in the court below committed an error of principle or was plainly wrong in the exercise of his or her discretion. An appellant must therefore satisfy this Court that the judge's exercise of discretion exceeded the generous ambit within which reasonable disagreement is possible, and is clearly or blatantly wrong. In the case at bar, it is apparent that all of the factors, except one, which were considered by the learned judge in exercising his discretion, related to Throne's failure to set aside Agile's statutory demand. In the BVI, there is no legal principle that the failure of a party to apply to set aside a statutory demand will prevent it from

receiving its costs if it is successful at resisting an application to appoint liquidators. Throne's failure to apply to set aside Agile's statutory demand therefore could not amount to misconduct or an unreasonable act which ought to have operated against it in the exercise of the judge's discretion, in the context of Throne's success in defending the liquidation application. In so far as the learned judge was of a contrary view, and exercised his discretion on the basis of his contrary view, he erred in principle and the exercise of his discretion was plainly wrong.

Dufour v Helenair Corporation Limited (1996) 52 WIR 188 applied; AEI Rediffusion Music Limited v Phonographic Performance Ltd [1999] 1 WLR 1507 applied; Scherer and another v Counting Instruments Ltd and another [1986] 2 All ER 529 applied; Everbright Sun Hung Kai Company Limited v Walton Enterprises Limited BVIHC(COM)2020/0022 (delivered 9th April 2020, unreported) distinguished.

3. The learned judge having erred in the exercise of his discretion, it therefore falls to this Court to exercise the discretion as to costs afresh. This Court must have regard to the totality of the circumstances including whether it was reasonable for Agile to pursue the particular course that it did in seeking to appoint liquidators over Throne. Taking into account all the surrounding circumstances, including the fact that Agile was aware that Throne was disputing the debt, the Court must consider whether it was reasonable for Agile to pursue the particular course of action that it did. Agile's pursuit of the court's insolvency jurisdiction prior to obtaining a judgment on the debt, was a 'high risk strategy'. Agile therefore ought to have ensured that it was pursuing a viable application and not one which was futile in the circumstances. As it stands, Agile should not have filed the liquidation application and did so at the risk of incurring costs where it was unsuccessful. Throne having successfully resisted Agile's application to appoint joint liquidators, albeit without even being called upon to make oral submissions, is a

sufficient basis upon which to conclude that Throne, having succeeded on the application, was entitled to its costs.

Rule 64.6(5) and (6) of the Civil Procedure Rules 2000 applied; Glaxosmithkline v UK (AID) Ltd [2004] BPIR 528 applied.

APPLICATIONS AND APPEALS

Case Name:

**Okeno Fergus
v
[1] Mohammed Lavia
[2] Attorney General of Saint Vincent and the
Grenadines**

**[SVGHCVAP2020/0012]
[St. Vincent and the Grenadines]**

Date:

Monday, 11th January, 2021

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicant: Mr. Jomo Thomas and Ms. Shirlan Barnwell

Issues:

Application for leave to appeal – Whether learned master erred in findings pursuant to section 3 of the Public Officers' Protection Act Cap. 276 of the Revised Laws of Saint Vincent and the Grenadines – Whether the claim against the Attorney General and tortfeasor should be struck out – Whether applicant has a realistic prospect of success – Application for extension of time – Application for relief from sanctions

**Type of Order/
Result:**

Oral Decision

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The application for an extension of time within which to seek leave to appeal is granted to 20th August 2020.**
- 2. The application seeking leave to appeal the judgment of Master Gill dated 29th July 2020 is deemed properly filed.**
- 3. The applicant is granted leave to appeal against the judgment of Master Gill dated 29th July 2020.**
- 4. The applicant shall file and serve the notice of appeal within 21 days of the date of this order.**

Reasons:

The Court was of the view that the applicant had satisfied the threshold requirements for the grant of (i) an extension of time within which to appeal and (ii) leave to appeal and for an extension of time in that the proposed appeal shows a realistic prospect of success. The Court also noted that there was no need for relief from sanctions to be granted as there was no sanction imposed for failure to seek leave within the prescribed time.

Case Name:

**[1] SKN Choice Times Limited
[2] Dwight Cozier**

v

Josephine Huggins

**[SKBHCVAP2020/0017]
[Saint Christopher and Nevis]**

Date:

Monday, 11th January 2021

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicant: Mrs. M. Angela Cozier

Respondent: Ms. Jordanne Marie Ebanks

Issues: Application to discharge order of single judge

Type of Order: Oral decision

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The application seeking to discharge or vary the order of Farara JA dated 20th October 2020 is dismissed.
2. The costs of the application shall be fixed in the sum of \$1,000 to be paid to the respondent on or before 25th January 2021.

Reasons: Mrs. Cozier, counsel for the applicant, made an application to discharge paragraph 2 of the order of Farara JA dated 20th October 2020 which refused to grant an interim stay of the costs order of Ventose J dated 23rd June 2020. The Court was of the view that the applicant failed to satisfy the test for the grant of a stay of execution as enunciated in the case of C-Mobile Services Ltd v Huawei Technologies Co. Ltd BVIHCMAP2014/0017 (delivered 2nd October 2014, unreported) and therefore dismissed the application.

Case Name: The Commissioner of Police
v
[1] Anthony Jordan
[2] Salome Lewis
[SVGMCRAP2019/0040]
[Saint Vincent and the Grenadines]

Date: Monday, 11th January 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant: Mr. Karim Nelson

Respondent: Mr. Ronald Marks

Issues:

Magisterial Criminal Appeal – Appeal against sentence – Unlawful possession of ammunition – Refusal of magistrate to tender ammunition into evidence - Ammunition marked for identification by police officer - Absence of labeling of exhibits and other identifying marks particular to respondents – Chain of custody - Whether learned magistrate erred in refusing to tender exhibits into evidence on the basis that there was a break in the chain of custody – Whether there was evidence which demonstrated breaks in the chain which puts the integrity of the exhibit or the authenticity into doubt – Whether learned magistrate erred in treating the matter as one in which she had no discretion - Whether in these circumstances the interest of justice would be served by ordering a retrial

Type of Order:

Oral judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The matter is remitted to the Magistrate's Court for a retrial before a different Magistrate.**

Reasons:

The Court was of the unanimous view that the appeal should be allowed. There was clear uncontroverted evidence before the Court in respect of the chain of custody of the ammunition, which was the subject matter of the charge. Furthermore, even if there were some doubt about the chain of custody, the learned Magistrate had a discretion which ought to have been exercised. The learned Magistrate appeared to have ignored the clear

evidence which was then before her and erred in treating the matter as one in which she had no discretion in respect of admitting the exhibits being the ammunition which was the subject of the charge. This is in keeping with the principles expounded in the case of *Damian Hodge v The Queen* [2010] ECSCJ No. 295.

The Court considered that, in the interest of justice, the appropriate recourse is to remit the matter to the Magistrate's Court for a retrial before a different magistrate.

Case Name:

Allie Franklyn Providence

v

The Commissioner of Police

**[SVGMCRAP2018/00038]
[St. Vincent and the Grenadines]**

Date:

Coram:

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

Appearances:

**Appellant: Ms. Kay Bacchus- Baptiste on record
No appearance of appellant**

Respondent: Mrs. Tammika DaSilva McKenzie

Issues:

Criminal appeal against conviction

Type of order:

Oral Judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The appeal is struck out for want of prosecution and is

accordingly dismissed.

Reasons:

The Court being mindful of the absence of the appellant without any excuse and having taken into account the order given at the last sitting of the Court which provided that the hearing of the appeal was being adjourned for 'one final time', accordingly struck out and dismissed the appeal for want of prosecution.

Counsel on record also indicated that she had ceased to represent the appellant and had received no communication or further instruction from him.

Case Name:

Clive Crick

v

[1] Norris Lewis

[2] Joan Lewis

[SVGHCVAP2018/0009]

[St. Vincent and the Grenadines]

Date:

Tuesday, 12th January, 2021

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: Mr. Richard Williams with Ms. Danielle France

Respondents: Dr. Linton Lewis

Issues:

Civil appeal - Application to amend Grounds of Appeal

Type of order:

Oral Decision

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Leave is granted to the applicant to withdraw the application to amend the grounds of appeal.

Reasons:

Counsel for the applicant made an oral application to withdraw the application to amend the grounds of appeal. There was no objection by Counsel for the respondent.

Case Name:

Clive Crick

v

[1] Norris Lewis

[2] Joan Lewis

[SVGHCVAP2018/0009]

[St. Vincent and the Grenadines]

Date:

Tuesday, 12th January, 2021

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: Mr. Richard Williams with Ms. Danielle France

Respondent: Dr. Linton Lewis

Issues:

Civil appeal – Cross examination – No independent witnesses - Whether learned trial judge erred in that, having established that the outcome of the case hinged on credibility, failed or refused to permit counsel for the appellant to pursue a line of cross-examination of the respondents intended to put in doubt their credibility – Rule 29.10 of the Civil Procedure Rules 2000 – Evidence elicited in cross-examination may be relevant to the witness’ credit despite not being directly relevant to issue before court – Latitude to be given to counsel during cross-examination where there is no independent

witnesses or admissible evidence – Rule 29.1 of the Civil Procedure Rules 2000

Type of order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED:

Judgment is reserved.

Case Name: RBTT Bank Caribbean Limited

v

[1] John Nicholson

[2] Garnet Williams

[SVGHCVAP2016/0005]

[St. Vincent and the Grenadines]

Date: Tuesday, 12th January, 2021

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: Mr. Stanley John, QC with Mr. Akin John

Respondents: Mr. Richard Williams with Ms. Danielle France

Issues: Civil appeal – Banker and customer relationship – Negligence – Breach of duty of care owed by bank – Whether the learned judge erred in finding the bank negligent – Contributory negligence – Customer’s duty to take reasonable precautions to prevent ATM card from being stolen – Whether learned judge erred in finding the respondents contributorily negligent – Special damages – Whether learned judge erred by reducing the damages claimed by respondents on the basis of contributory negligence – Causation – Whether damage suffered would

still have occurred if bank had not breached its duty of care

Type of order: N/A

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

Judgment is reserved.

Case Name: Kemiah Nichols
v
The Commissioner of Police

[SVGMCRAP2020/0013]
[St. Vincent and the Grenadines]

Date: Tuesday, 12th January, 2021

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: No appearance

Respondent: Ms. Rose-Ann Richardson

Issues: Magisterial criminal appeal against sentence –
Adjournment

Type of order: Adjournment

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

The hearing of this appeal is adjourned and traversed to the next sitting of the Court of Appeal in the State of Saint

Vincent and the Grenadines during the week commencing 14th June 2021.

Reasons:

There was no appearance of or for the appellant. The Court noted correspondence received from the Chief Immigration Officer of Saint Vincent and the Grenadines indicating that the appellant had left the State in January 2020 and that there was no record of his return.

Counsel for the respondent indicated to the Court that the respondent intended to concede the appeal against sentence and intended to suggest the imposition of a fine instead of a custodial sentence.

Counsel for the respondent made an oral application for the adjournment of the matter.

Case Name:

Jaime Scatliffe

v

The Commissioner of Police

[BVIMCRAP2020/0008]

[BVIMCRAP2020/0009]

[BVIMCRAP2020/0010]

(Territory of the Virgin Islands)

Date:

Thursday, 12th January, 2021

Coram:

**The Hon. Mde. Louise Esther Blenman, 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. Stephen Daniels

Respondent: Mr. Kael London

Issues:

**Criminal appeal – Application for bail pending appeal -
Whether the circumstances relied on by appellant are**

exceptional circumstances which justify grant of bail pending appeal

Type of order: Oral Decision

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Bail is set in the amount of \$50,000 with the amount of \$10,000 being the cash component for one signed surety.
2. The appellant shall adhere to the following conditions:
 - (a) He shall report to the Road Town Police Station on Mondays, Wednesdays and Fridays between the hours of 6am and 6pm;
 - (b) He shall surrender his passport and all travel documents to the Registrar of the High Court of the Virgin Islands;
 - (c) He shall observe the curfew from 8pm – 6am daily.

Reasons: This is an application for bail pending appeal where Mr. Scatliffe was convicted of three (3) offences, fined in relation to two (2) and sentenced to time for one of the offences. Of the six (6) months sentence, three (3) months of that sentence are suspended. Mr. Scatliffe has deposed that his sentence of three (3) months will expire on the 23rd February 2021 and he indicated that that coincides with the sitting of the Court in the Territory of the Virgin Islands. He complained that unless he is admitted to bail, there is the likelihood of him completing the sentence and thereafter the bail application would have been rendered nugatory. He therefore sought the leave of this Court to be admitted to bail pending the appeal on the basis of the principles that are well established in The State v Lynette Scantlebury (1976) 2 WIR 103.

The Court has listened to the submissions of learned

counsel of Mr. Daniels. The Court has also listened to the submissions of Mr. London who quite professionally and properly has indicated that there is no objection to Mr. Scatliffe being admitted to bail based on the well-settled principles outlined in the aforementioned case.

In the circumstances, the Court is of the view that this is an appropriate case for Mr. Scatliffe to be granted bail so as to prevent his appeal being rendered nugatory in the sense that he would have completed his sentence before the hearing of his appeal. Accordingly, bail was granted on the conditions set out in the order.

Case Name: Patricia Anne Huggins
V
Lloyd Browne
[SVGHCVAP2018/0007]
(St. Vincent and the Grenadines)

Date: Thursday, 14th January, 2021

Coram: The Hon. Mde. Louise Esther Blenman, 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. Richard Williams
Respondent: Ms. Suenel Fraser

Issues: Civil appeal – Wasted costs – Rule 64.9 of the Civil Procedure Rules 2000 – Whether an appropriate case to impose a wasted costs order – Natural justice – Prior notice and reasonable opportunity to be heard before imposing a wasted costs order under rule 64.9(2) of the CPR – Whether prior notice and reasonable opportunity to be heard given to appellant

Type of order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED:

1. Leave is granted to the appellant to withdraw grounds 5 and 6 of the notice of appeal.
2. Judgment is reserved.

Case Name: **Sjada Daniel**

v

The Commissioner of Police

**[SVGMCRAP2019/0035]
(St. Vincent and the Grenadines)**

Date: **Thursday, 14th January, 2021**

Coram: **The Hon. Mde. Louise Esther Blenman, 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. Grant Connell**

Respondents: **Ms. Rose-Ann Richardson**

Issues:

Type of order: **Oral judgment**

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal in relation to both counts is allowed.
2. The conviction is quashed.
3. The sentences are set aside.

Reason:

This is an appeal by the appellant against his sentence and conviction on the basis that the decision of the magistrate was unreasonable and cannot be supported by the evidence. In relation to sentence, he complained that it was harsh and excessive in the circumstances.

The appellant was convicted of the offence of burglary with intent to commit the offence of theft and burglary contrary to section 217(1)(b) of the Criminal Code of Saint Vincent and the Grenadines.

Learned counsel for the appellant was content to pursue the issue of sentence. Learned prosecutor Ms. Richardson quite professionally and ethically adverted the Court's attention in paragraph 6.6 of her written submissions that in so far as the only evidence before the learned magistrate was that of a co-accused, the learned magistrate ought to have upheld the no case submissions. Ms. Richardson quite properly indicated that it is trite law that the evidence of one co-accused is not evidence against the other and so what the co-accused said ought not to have been used to determine appellant's guilt.

The learned prosecutor properly submitted that the no case submission should have been upheld as the prosecution did not come up with proof to meet the elements of the offences against the appellant beyond a reasonable doubt and that the convictions were unsafe.

The Court having reviewed the submissions want to commend Ms. Richardson highly for her thorough work and professionalism in adverting the Court's attention to those matters.

Having reviewed the entirety of the matter, the Court agreed that the learned magistrate ought to have upheld the no case submission based on the well-known principle in the case of R v Galbraith (1981) 2 All E.R. 1060 and also on the settled principle that the evidence of one co-accused is not evidence in a court of law against another co-accused. That being the only evidence, it meant that there would have been a failure of the prosecution to establish the guilt of the appellant beyond a reasonable doubt.

In accordance with the proper concession of the Crown, the Court unanimously concludes that the appeal should be allowed.

Case Name:

Iso Lynch

V

The Commissioner of Police

**[SVGMCRAP2020/0019]
(St. Vincent and the Grenadines)**

Date:

Thursday, 14th January, 2021

Coram:

**The Hon. Mde. Louise Esther Blenman, 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: No appearance

Respondent: Ms. Maria Jackson-Richards

Issues:

**Magisterial criminal appeal – Appeal against sentence –
Appeal struck out for want of prosecution**

Type of order:

Oral judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

The appeal against sentence is struck out on the basis that the appellant has served his sentence and has not appeared for the prosecution of the appeal.

Reasons:

Case Name:

Cardel Jacobs

v

The Commissioner of Police

**[SVGMCRAP2019/0029]
(St. Vincent and the Grenadines)**

Date:

Thursday, 14th January, 2021

Coram:

**The Hon. Mde. Louise Esther Blenman, 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: Ms. Charmaine Walters

Respondents: Ms. Renee Simmons

Issues:

Type of order:

Oral judgment

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the appellant to file and serve written submissions with authorities on or before 10th February 2021.**
- 2. Leave is granted to the respondent to file and serve written submissions, if necessary, on or before 4th March 2021.**
- 3. The hearing of appeal is adjourned and traversed to next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 14th June 2021.**

4. This is the final adjournment in this matter.

Reason: Counsel for the appellant indicated that she was only recently retained and has not had sight of the record and therefore sought the Court's indulgence for an adjournment. The respondent had no objection but requested that it be the final adjournment as this would be the third adjournment in this matter.

Case Name: **Desmond Llewellyn**

V

Rent and Drive Ltd

**[SVGMCVAP2014/0016]
(St. Vincent and the Grenadines)**

Date: **Thursday, 14th January, 2021**

Coram: **The Hon. Mde. Louise Esther Blenman, 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. Ronald Marks**

Respondent: **Ms. Samantha Robertson**

Issues: **Magisterial civil appeal – Whether learned magistrate erred in failing to set aside ex parte judgment – Conflicting affidavits – Whether appellant had been properly served with plaint or magistrate summons – Whether learned magistrate erred in law by accepting the return of service as conclusive proof of actual service – Whether decision of learned magistrate unreasonable and cannot be supported having regard to the evidence**

Type of order: **Oral judgment**

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

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed.
2. The decision of the magistrate in refusing to set aside the judgment is overruled.
3. The ex parte application which is being challenged by a set aside application is remitted for consideration by another magistrate.
4. Each party shall bear its own costs.

Reasons:

This is an appeal against the decision of the learned magistrate in circumstances where the issue before the magistrate was whether or not the appellant had been served with the plaint. The appellant, by way of affidavit, specifically took issue with and asserted that he was never served with any plaint, or magistrate summons on 7th October 2013 or any at all or in relation to any claim against him by the respondent.

The magistrate had before her an affidavit of service deposed to by the bailiff and in circumstances where there was an issue as to the fact of service, the magistrate nevertheless felt able to resolve that issue where there was no cross-examination to test the evidence. The magistrate refused to set aside the orders that had been made. The appellant, aggrieved, has appealed.

Having considered the written and oral submissions of both counsel, the Court was of the view that the learned magistrate ought to have ensured that a *voir dire* or some form of testing of the evidence was done in order to properly resolve the conflicting evidence that was before the court as to whether or not the appellant was served.

The learned magistrate did not undertake that task but felt able to conclude that the appellant was required to provide proof that he had been employed and as a consequence, was abroad. Having reviewed the circumstances in its entirety, the Court was of the considered view that the magistrate erred as a matter of law in coming to the conclusion that service was effected as a matter of fact without there being any testing of the conflicting evidence. Accordingly, the appeal was allowed and the decision of the magistrate set aside.

