

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
GRENADA
VIDEOCONFERENCING
20th SEPTEMBER TO 24th SEPTEMBER 2021.

JUDGMENTS

Case Name: Webster Dyrud Mitchell et al
v
Jenny Lindsay

[AXAHCVAP2017/0001]
(ANGUILLA)

Date: Monday, 20th September 2021

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

Appearances:

Appellant:	Ms. Rayana Dowden
Respondent:	In person

Issues: Civil appeal – Breach of contract – Repudiatory breach – Findings of facts – Whether judge erred in findings on counterclaim – Approach of appellate court to challenges of findings by judge – Breach of natural justice – Right to be heard on the hearing of costs – Exercise of judicial discretion – Whether judge erred in ordering that each party should bear their own costs without hearing – Exercise of discretion afresh by appellate court – Whether in the circumstances Court

should exercise its discretion afresh – General principle costs follow the event – Rule 64.6 of the Civil Procedure Rules 2000 – Circumstances in which costs follow the event principle is disapplied – Misconduct – Denying successful party's costs where there is misconduct – Costs – Prescribed costs – Rule 65.5(2) of Civil Procedure Rules – Value of claim – Whether it is open to this Court to determine the value of the claim

Result and

Reason:

Held: dismissing the appeal in part; allowing the appeal against the costs order; awarding the Employers prescribed costs on the claim valued at \$50,000.00 XCD and the counterclaim in the court below; and on the appeal, half of two-thirds of the prescribed costs awarded in the court below; and making the orders set out at paragraph 75 of the judgment, that:

1. It is settled law that an appellate court must show fidelity to the well-settled principles governing the appellate review of a trial judge's findings of facts, the evaluation of those facts and the inferences drawn from them by the trial judge. Importantly, the appellate court is enjoined to exercise restraint in its review of the findings of the lower court that was immersed in all aspects of the trial and has advantages that the appellate court does not possess. Therefore, in order to successfully challenge findings of fact and inferences, the appellant must demonstrate to this Court that the judge made findings or came to conclusions which cannot be supported by the evidence or which were not open to her. In the High Court, the Employers' contention that Ms. Lindsay had taken excess vacation leave was resisted. While the Employers provided oral evidence in relation to excess vacation leave, this was vigorously disputed by Ms. Lindsay. However, the Employers provided no documentary evidence to the learned judge on the issue of excess vacation leave. The judge quite properly expressed her dissatisfaction with the quality of evidence provided and was simply unable to

conclude that the Employers had proven that aspect of its case. It follows therefore, that it was open to the judge to make the conclusions that she did as it related to the claim for excess vacation leave allegedly taken by Ms. Lindsay. There is no basis upon which this Court can impugn the judge's conclusions on the cogency of the evidence. The decision of the judge on the excess vacation leave is therefore affirmed.

Watt (or Thomas) v Thomas [1947] A.C. 484 followed; Yates Associates Construction Company Ltd v Blue Sands Investments Limited [2016] ECSCJ No. 63 (delivered 20th April 2016) followed; Ming Siu Hung and others v J F Ming Inc and another [2021] UKPC 1 applied; Shaista Trading Company Limited v First Caribbean International Bank (Barbados) Ltd [2021] ECSCJ No. 534 (delivered 26th April 2021) followed; Shankar Khushalani et al v Lindsay Mason GDAHCVAP2016/0017 (delivered 11th June 2021, unreported) followed.

2. It is settled law that in order to challenge a judge's exercise of discretion, a party must demonstrate, to the appellate court, that the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and that, as a result of the error or the degree of the 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 clearly or blatantly wrong. Indeed, the appellate court must exercise judicial restraint in its review of the exercise of discretion by the judge, save in these very limited circumstances.

Michel Dufour and Others v Helenair Corporation Limited and Others (1996) 52 WIR 188 followed.

3. In making a costs order, basic procedural fairness demands that the judge hears from the

parties. A party whose interests or rights may be affected by a decision should be given adequate notice to apprise himself of the case that he has to meet and a fair and reasonable opportunity to be heard and to defend himself. In the case at bar, natural justice or procedural fairness required the trial judge to invite either oral or written submissions from the parties on the issue of costs. Accordingly, this Court must set aside the judge's cost order insofar as the judge's order was made without giving the parties an opportunity to be heard on the question of costs. It therefore falls to this Court to exercise its discretion afresh.

Patricia Anne Huggins v Lloyd Browne SVGHCVAP2018/0007 (delivered 14th June 2021, unreported) followed; Novel Blaze Limited (In Liquidation) v Chance Talent Management Limited BVIHCVAP2020/0006 (delivered 16th April 2021, unreported) followed.

4. In the exercise of the court's discretion, the general costs rule is that the unsuccessful party will be ordered to pay the costs of the proceedings to the successful party. The court is, however, given very wide discretionary powers to vary the application of the general rule. These include the power to order a successful party to pay all or part of the costs of an unsuccessful party or make no order as to costs or to pay only certain portions of another person's costs. Importantly, the judge, in the exercise of his or her discretion, must give real weight to the principle that costs follow the event. It follows therefore that it is incumbent on a judge to give reasons for departing from the usual rule that costs follow the event. Further, in exercising this discretion as to costs, the court is required to have regard to all the circumstances and to act judicially.

Rule 64.6 of the Civil Procedure Rules 2000 considered; The Hon. Attorney General et al v D. Gisele Isaac [2016] ECSCJ No. 35 (delivered 11th March 2016) followed; Aspin v Metric Group Ltd

[2007] EWCA Civ 922 followed; AEI Rediffusion Music Ltd v Phonographic Performance Ltd [1999] 1 W.L.R. 1507 applied; Rochamel Construction Limited v National Insurance Corporation [2003] ECSCJ No. 83 (delivered 24th November 2003) followed; Adamson v Halifax Plc [2003] 1 WLR 60 followed; Donald Campbell and Company Limited v Pollak [1927] AC 732 followed; Throne Capable Investment Limited v Agile Star Group Limited [2021] ECSCJ No. 433 (delivered 14th January 2021) followed; Delta Petroleum (Nevis) Limited v OOJJ's Ltd (Doing business as OOJJ's Service Station) and another [2016] ECSCJ No. 154, (delivered 10th October 2016) followed.

5. There are a number of factors that can lead to a court disapplying the general rule on costs so as to deprive a successful party of its costs. These include misconduct by the parties. Misconduct before the proceedings and during the proceedings can impact the court's exercise of discretion and can result in the court depriving the successful party of its costs. Indeed, while CPR 64.6(6) states that the court must have particular regard to the conduct of the parties before and during the proceedings, conduct is not the only factor that the court must consider in arriving at its decision whether to award costs. In this case, it cannot be said that because numerous applications were filed and canvassed, with the court's permission, that this amounted to misconduct without more.

Rule 64.6 of the Civil Procedure Rules 2000 considered; Bostock v Ramsey Urban District Council [1900] 1 QB 357 considered; Dunnett v Railtrack Plc [2000] Lexis Citation 1491 considered; Texaco Ltd v Arco Technology Inc [1989] Lexis Citation 1193 distinguished; Earl of Malmesbury and others v Strutt and Parker [2008] EWHC 424 (QB) distinguished.

6. In the circumstances of this appeal there is no proper basis upon which this Court can disapply the general rule to deny the Employers their

costs in successfully defending Ms. Lindsay's claim and being largely successful in prosecuting the counterclaim in the court below. Also, insofar as the Employers have successfully prosecuted part of their appeal, they are entitled to their costs.

Bostock v Ramsey Urban District Council [1900] 1 QB 357 considered; Dunnett v Railtrack Plc [2000] Lexis Citation 1491 considered; Texaco Ltd v Arco Technology Inc [1989] Lexis Citation 1193 distinguished; Earl of Malmesbury and others v Strutt and Parker [2008] EWHC 424 (QB) distinguished.

Case Name:

**Candey Limited
v
Russell Crumpler et al**

**[BVIHCMAP2020/0021]
(TERRITORY OF THE VIRGIN ISLANDS)**

Date:

Tuesday, 21st September 2021

**Coram for
delivery of
judgment:**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

**Appellant: Mr. Christopher Bromilow
Respondents: Mr. Andrew Willins**

Issues:

Interlocutory Appeal — Liquidation proceedings — Order of learned judge dismissing application to treat monies owed under agreement as expense of liquidation — Whether order of learned judge final or interlocutory in nature - Application test — Rule 62.1(3) of the Civil Procedure Rules 2000 — Whether Candey Limited required leave to appeal - Application to strike out notice of appeal as nullity — Application for extension of time to seek leave to appeal — Whether Candey Limited satisfied the requirements to be granted an extension of time — Length of delay and whether delay excusable — Whether there was a realistic prospect of success on the appeal — Prejudice to parties — Errors made by legal practitioners in advising clients on matters of law and procedure

Result and Reason:

Held: striking out the notice of appeal; dismissing the application for an extension of time within which to seek leave to appeal; and ordering that Candey Limited shall bear the costs of the applications in the amount of US\$3,000.00, to be paid to the respondents herein within 14 days of the date of this order, that:

1. The effect of Candey Limited's application was to obtain an order that by virtue of the 'adoption' of the FFA by the liquidators, the sum of £3,860,637.48 under the FFA was an expense of the liquidation and therefore ranked higher in the statutory waterfall and, consequently, ahead of the other creditors. Irrespective of how Candey Limited's application was decided, it would not have determined all of the issues between the parties. Candey Limited's application was a part of the broader liquidation action which centered on the winding up of Peak Hotels and was solely focused on Candey Limited's rank in the insolvency waterfall. This is not determinative of the liquidation proceedings. Accordingly, the order dismissing Candey Limited's application is interlocutory in nature and is not excepted from the leave requirement outlined in section 30(4) of the Supreme Court Act.

Section 30(4) of the Eastern Caribbean Supreme Court (Virgin Islands) Act, Cap. 80 of the Laws of the Virgin Islands; Rules 62.1(3), 62.2(1), 62.5(1)(b) of the Civil Procedure Rules 2000 applied; Nigel Hamilton-Smith et al v Alexander M. Fundora ANUHCVP2010/0031 (delivered 31st August 2010, unreported) followed.

2. It is well settled that this Court's jurisdiction to hear and determine appeals is derived from statute. Accordingly, in circumstances where the appeal is an interlocutory appeal for which leave is required in accordance with rule 62.5(1)(b) of the CPR and the notice of appeal is filed without such leave, this Court has no jurisdiction to hear the appeal and the appeal must be struck out as a nullity.

Nevis Island Administration v La Corpproprete du Navire J31 St. Kitts and Nevis Civil Appeal No. 7 of 2005 (delivered 29th December 2005) followed; Pirate Cove Resorts Limited v Euphemia Stephens [2003] ECSCJ No. 19 (delivered 5th March 2003) followed; Oliver McDonna v Benjamin Wilson Richardson [2007] ECSCJ No. 96 (delivered 29th June 2007) followed; Antigua Commercial Bank v Louise Martin [2008] ECSCJ No. 2 (delivered 15th January 2008) followed.

3. The grant of an extension of time involves the exercise of the Court's discretion. In the exercise of its discretion, the Court is guided by a consideration of factors beginning with the length and reason for delay. The Court also considers the prospect of success in the appeal if the extension of time is granted, as well as the degree of prejudice to the parties if the extension is granted or refused. In this case, the 11-week delay in seeking leave to appeal was clearly inordinate and the sole reason advanced by Candey Limited, being the error made by their legal practitioners as to the nature of the order being appealed, does not suffice as a satisfactory explanation. This is so given the clear provisions of the CPR and the Supreme Court Act as to when an order or judgment is

interlocutory and requires leave, and the pronouncements of the Court that orders made in the course of liquidation proceedings, whilst the liquidation subsists, are not final orders.

Carleen Pemberton v Mark Brantley SKBHCVP2011/009 (delivered 14th October 2011, unreported) followed.

4. It is well-settled that an appellate court will not lightly interfere with the factual findings, evaluations and inferences made by the court below. Having perused the judgment of Jack J [Ag.], in particular, the aspects of it that Candey Limited have sought to impugn, there is no basis for this Court to interfere with the judge's findings. Candey Limited has neither demonstrated any flaw, nor has this Court found any demonstrable flaw, in the judge's reasoning and conclusion. The findings of fact made by the learned judge were both reasonable and supported by the evidence, and ought not to be disturbed by this Court. Similarly, there is no discernible issue with the learned judge's appreciation and application of the law. Accordingly, Candey Limited has not crossed the hurdle of satisfying this Court that it has a realistic prospect of success on an appeal.

Watt (or Thomas) v Thomas [1947] A.C. 484 applied; Yates Associates Construction Company Ltd v Blue Sand Investments Limited [2016] ECSCJ No. 63 (delivered 20th April 2016) followed; Shaista Trading Company Limited v First Caribbean International Bank (Barbados) Ltd [2021] ECSCJ No. 534 (delivered 26th April 2021) followed.

5. In a 4-year period, Candey Limited has repeatedly litigated to recover the entirety of the amount provided for in the FFA, with the application before the learned judge in the court below being 'the fourth round'. It is evident that the litany of litigation will result in some degree of prejudice being occasioned to the creditors if the liquidators were subjected to another round

of litigation on a claim which has been rejected in both the English and the BVI courts.

Carleen Pemberton v Mark Brantley
SKBHCVAP2011/009 (delivered 14th October 2011, unreported) followed.

Case Name:

[1] Samantha S. Bass
[2] Hyatt A. Bass
[3] Julian Christopher Hugh Lethbridge
(as Independent Executors of the Estate of
Anne Hendricks Bass, deceased)
v
[1] Director Of Physical Planning
[2] Development Advisory Committee
[3] Caribbean Development Consultant
Limited

[SKBHCVAP2018/0002]
(Saint Kitts and Nevis)

Date:

Wednesday, 22nd September 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:

Mr. Damian Kelsick

Respondent:

Mr. Ruggles Ferguson holding papers for Ms. Jean Dyer

Issues:

Civil appeal – Judicial review – Planning permission - Unreasonable delay – CPR 56.5 - Discretion of judge at substantive hearing to revisit issue of delay already canvassed at leave stage - Test for exercising discretion to revisit issue of delay at substantive stage – Whether unreasonable delay a bar to relief – Public interest considerations – Relief detrimental to good administration – Substantial hardship - Whether delay

outweighed public interest considerations - Costs – Costs in judicial review applications - Whether learned judge erred in awarding costs to respondents

**Result and
Reasons:**

Held: dismissing the appeal save in relation to the issue of costs and setting aside the learned trial judge's order on costs; and ordering that each party bears their costs on appeal, that:

- 1. The court has a discretion to revisit the issue of delay in bringing an application for judicial review at the substantive hearing even if the issue was contested at the leave stage. The record shows that at the trial, there was evidence relating to the issue of delay before the learned judge which was not before him at the leave stage. There was therefore an evidential and legal basis for the learned judge to revisit the issue of delay at the substantive hearing.**

Rule 56.5 of the Civil Procedure Rules 2000 applied; R v Lichfield District Council and Christopher J.N. Williams ex parte Lichfield Securities Limited [2001] EWCA Civ 304 applied; Roland Browne v The Public Service Commission SLUHCVP2010/0023 (delivered 15th December 2010, unreported) considered.

- 2. The appellate court ought not to interfere with findings of fact unless compelled to do so and this extends to primary facts, the evaluation of those facts and the inferences to be drawn from them. In this case, the judge's findings that the appellant was substantially responsible for the delay was a finding of fact based on the oral and documentary evidence before him and there was no discernible error of law or principle. There is therefore no basis to interfere with that finding.**

Ming Siu Hung and others v JF Ming Inc and another [2021] UKPC 1 applied.

- 3. CPR 56.5 gives the judge a discretion to refuse to grant relief where there was delay in**

instituting the proceedings and the grant of relief would likely be detrimental to good administration and would be likely to cause substantial hardship or substantially prejudice the rights of any person. The learned trial judge considered the considerable sums the Developer had expended on the Project, the contracts entered into with third parties and the engagement of Government Departments in granting of citizenships to third parties who had purchased units. The judge therefore had enough evidence on which he could have made his finding.

Rule 56.5 of the Civil Procedure Rules 2000 applied; *R v Lichfield District Council and Christopher J.N. Williams ex parte Lichfield Securities Limited* [2001] EWCA Civ 304 considered.

4. Public interest considerations do not automatically trump inexcusable delay. The court has a discretion and the manner of the exercise of such a discretion will depend on the circumstances of the case. The weight to be given to public interest considerations would depend on the nature of the considerations having regard to the circumstances of the case. In this case, while the protection of the marine environment was a public interest, the judge considered all the relevant factors before him. Accordingly, there is no basis for the Court to interfere with the exercise of the judge's discretion.
5. The general rule under CPR 56.13(6), is that the judge has a discretion to order costs if he finds an applicant for an administrative order acted unreasonably in making the application or in conduct of the application. Where there is no application for costs, as was the case in this appeal, if a judge is mindful to award costs under the rule, then the learned judge must invite submissions on the issue before exercising his discretion. The fact that the claim was meritorious, but relief only refused because

of the delay, was a relevant factor the judge ought to have considered in exercising his discretion. The judge having failed to do so, he erred in his award of costs against the appellant and the court's order must be set aside.

Rule 56.13(6) of the Civil Procedure Rules 2000 considered; R v Pembrokeshire County Council and Pembrokeshire Coast National Park Authority, ex parte Hardy and Maile [2005] EWHC 1872 (Admin) (26 July 2005) considered; Maharaj v National Energy Corporation of Trinidad and Tobago [2019] UKPC 5 considered.

Case Name:

Chen Mei-Huan
v
[1] Victory Success Holdings Limited
[2] Peckson Limited
[3] Macau Hotel Developers Limited

[BVIHCMAP2020/0028]
(TERRITORY OF THE VIRGIN ISLANDS)

Date:

Thursday, 23rd September 2021

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. John McDonnell, with him, Ms. Dancia Penn, QC
Respondent: Mr. Andrew Willins for the first respondent
Ms. Rosamund Baker for the second and third respondents

Issues:

Interlocutory appeal – Commercial appeal – Appellate court's review of trial judge's exercise of discretion – Interim injunction – American Cyanamid principles –

Threshold test for the grant of an interim injunction – Serious issue to be tried – Whether judge’s conclusion that material before him disclosed no serious issue to be tried was correct – Failure of witness to be cross-examined – Appellate court’s entitlement to exercise discretion afresh – Locus standi – Whether appellant had standing to make application for the interim injunction – Locus standi of shareholder to apply for interim injunction – Balance of convenience – Whether balance of convenience favoured the grant of interim injunction – Disclosure – Duty to make full and frank disclosure of all material facts to court – Whether interim injunction should be discharged on the ground that appellant was guilty of material non-disclosure on ex parte application – Forum non conveniens – Whether judge’s decision to stay action was correct

Result and Reason:

Held: dismissing the appeal; affirming the judge’s order staying the action on the ground of forum non conveniens; and awarding costs to Victory Success to be assessed by a judge of the Commercial Court at no more than two thirds of the costs in the court below, unless agreed between the parties within 21 days of this order, that:

- 1. Where the decision of a trial judge is based on the exercise of discretion, provided that he has not failed to take into account relevant matters, has not had regard to irrelevant factors and has not reached a decision that is plainly irrational, an appellate court should exercise restraint in its review of the decision. In particular, where an appeal arises from a decision on an application for an interlocutory injunction, an appellate court should defer to the judge’s exercise of his discretion and should only interfere with it if it can be shown to be based upon a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal. This need for appellate**

caution also arises in relation to appeals against a judge's decision on forum applications. As it is pre-eminently a matter for the trial judge, the appellate court should also be slow to interfere.

Hadmor Productions Ltd and others v Hamilton and another [1983] 1 AC 191 applied; In the matter of the Insolvency Act 2003; In the Matter of Fairfield Sentry Limited (In Liquidation), Fairfield Sigma Limited (In Liquidation); In the matter of Fairfield Lambda Limited (In Liquidation); ABN Amro Fund Services (Isle of Man) 24 Nominees Limited formerly Fortis (Isle of Man) Nominees Limited) and others v Kenneth Krys and others, [2017] ECSCJ No. 255, (delivered 20th November 2017) followed; Ming Siu Hung and others v J F Ming Inc and another [2021] UKPC 1 applied; In re B (A Child) (Care Proceedings: Threshold Criteria) [2013] 1 WLR 1911 applied; Spiliada Maritime Corporation v Cansulex Ltd ("Spiliada") [1987] 1 AC 460 applied

2. The American Cyanamid principles provide that in granting interlocutory injunctions, the court must be satisfied that there is a serious question to be tried. The court's function at this stage of the litigation is not to embark upon anything resembling a trial of the action upon conflicting affidavits in order to evaluate the strength of either party's case. However, this does not suggest that the judge on the interlocutory application should not scrutinise the evidence carefully. The American Cyanamid principles have a degree of flexibility and they do not prevent the court from giving proper weight to any clear view which the court can form at the time of the application for interim relief as to the likely outcome at trial. In this matter, Madam Chen's entire case is entirely dependent on Mr. Xu's evidence. At the trial, it will require careful scrutiny from the trial judge in order to determine its truth. This includes assessing how Mr. Xu fares in the face of what is bound to be vigorous cross-examination. However, the judge failed to avail himself of the advantage of Mr. Xu's presence at the virtual hearing and

acknowledged that, in the circumstances of this case, cross-examination of Mr. Xu was plainly indicated. This failure impacted the trial judge's credibility assessment of Mr. Xu, a critical component for determining whether there was a serious issue to be tried. It revealed a clear misunderstanding of the guidance laid down in *American Cyanamid*. Accordingly, the judge's approach to Mr. Xu's evidence, and by extension determination of the issue whether Madam Chen had demonstrated that there was a serious question to be tried, was flawed. The Court is therefore entitled to set aside the judge's exercise of his discretion and exercise its own afresh.

American Cyanamid Co. (No. 1) v Ethicon Ltd [1975] AC 396 applied; *Guardian Media Groups PLC and others v Associated Newspapers Ltd* [2000] Lexis Citation 2114 applied; *Hollington v F. Hewthorn and Company, Limited, and Another* [1943] 1 KB 587 considered; *Series 5 Software Ltd v Clarke and others* [1996] 1 All ER 853 considered.

3. Company law dictates that a company is a separate legal entity, with its own rights and liabilities, and no cause of action is therefore vested in the shareholder to recover damages for the diminution in the value of the shares. It is the court's unequivocal conclusion that, from the standpoint of company law, the shareholder does not suffer any personal loss. In this case, the question of whether Madam Chen has locus standi to maintain her claim for an interim injunction, gives rise to the discrete issue of company law which requires it to be considered as a separate matter. Even if it is possible to segment Madam Chen's claims in the manner contended, that is, to distinguish between the claim for declaratory relief and the other claims, it is clear that, her action is one brought on behalf of Empresa, rather than on her own behalf. It is also clear that Madam Chen's application for an injunction was premised on Empresa's right of ownership of the Hotel, hence the claim for an order transferring the

Hotel to Empresa by way of restitution. However, the loss was suffered by Empresa. Madam Chen therefore does not possess the locus standi to apply for the interim injunction. Further, section 22 of the West Indies Associated States Supreme Court (Virgin Islands) Act, is not determinative of Madam Chen's locus standi to apply for the interim injunction in this case. Section 22 of the West Indies Associated States Supreme Court (Virgin Islands) Act, means no more than that an action or proceeding shall not be open to objection on the ground only that a declaratory judgment is sought thereby. The judge's conclusion on the question of standing was one which he was fully entitled to reach, and there is therefore no basis to disturb it.

Guaranty Trust Company of New York v Hannay & Company [1915] 2 KB 536 considered; Prudential Insurance Company Ltd v Newman Industries Ltd and Others (No. 2) [1982] 1 All ER 354 applied; Sevilleja v Marex Financial Ltd [2021] 1 All ER 585 applied; West Indies Associated States Supreme Court (Virgin Islands) Act Cap. 80 of the Revised Laws of The Virgin Islands considered.

4. In this case, the grant of the interim injunction to preserve the status quo would hardly improve Madam Chen's position. Victory Success would still be a secured creditor in respect of a debt which neither the debtor, Empresa, nor Madam Chen had any means or prospect of repaying. In any event, an interim injunction preventing sale of the Hotel would not maintain the true status quo but would impermissibly worsen Victory Success's position pending trial by comparison with its status, on admitted facts, as a mortgagee entitled to repayment. Victory for Madam Chen on the duress issue could only have the effect of rolling back the transfer of the Hotel to Victory Success, which would remain a secured creditor. In these circumstances, it is clear that the balance of convenience could not possibly favour continuation of the interim injunction, and absolutely no basis has been

shown to interfere with the judge's exercise of his discretion in this regard.

American Cyanamid Co. (No. 1) v Ethicon Ltd [1975] AC 396 applied.

5. An applicant for ex parte relief has a positive duty to make full and frank disclosure of all material facts to the court, including not only those known to him, but those which may have been discovered by the making of reasonable enquiries. The duty encompasses both facts which weigh in his favour well as as those which may weigh against him, as well as matters of law. The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application; (b) the order for which application is made and the probable effect of the order on the defendant; and (c) the degree of legitimate urgency and the time available for the making of inquiries. A breach of this duty will normally, though not inevitably, lead to a discharge of an injunction obtained ex parte. However, it is not for every omission that the injunction will be automatically discharged. A locus poenitentiae may sometimes be afforded, as the court has a discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the ex parte order, nevertheless to continue the order, or to make a new order on terms.

Brink's Mat Ltd v Elcombe [1988] 1 WLR 1350 applied; Gee on Commercial Injunctions 6th. edn, para 9-005 applied; Enzo Addari v Edy Gay Addari, [2005] ECSCJ No. 59, (delivered 23rd September 2005) followed; Thelma Paraskevaides and another v Citco Trust Corporation Limited and others, [2020] ECSCJ No. 107, (delivered 30th March 2020) followed.

6. Victory Success' complaints of Madam Chen's non-disclosure as it related to, forum, locus standi, the strength of her case, the effect of her

claim succeeding, her financial position and the fact that the interim injunction would impede urgent remedial work to the Hotel, when considered and upon application of the authorities, are amply justified and the judge was indeed fully entitled to discharge the interim injunction. While a locus poenitentiae may sometimes be afforded to the applicant, thereby allowing the court in its discretion to either continue the order, or make a new order on terms, nothing was placed before the Court to suggest that the judge ought to have either continued or re-imposed the interim injunction in this case. The duty of responsible disclosure had clearly not been met in this case and, the judge was entitled to discharge the interim injunction on that basis.

7. A stay will only be granted where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action. The court will take into consideration factors affecting convenience and expense but also other factors such as the law governing the relevant transaction, and the places in which the parties respectively reside or carry on business, to determine the appropriate forum for the trial of the action. In general, the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay. However, if the court is satisfied that there is another available forum which is *prima facie* the appropriate forum for the trial of the action, the burden will then shift to the claimant to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in the country. If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay. If, however the court concludes at that stage that there is some other available forum which *prima facie* is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are some

circumstances by reason of which justice requires that a stay should nevertheless not be granted.

Spiliada Maritime Corporation v Cansulex Ltd (“Spiliada”) [1987] 1 AC 460 applied; IPOC International Growth Fund Limited v LV Finance Group Limited and others [2005] ECSCJ No. 58, (delivered 19th September 2005) followed; Livingston Properties Inc and Others v JSC MCC Eurochem and Another [2020] UKPC 31 considered.

8. In applying those principles, the judge’s first step was to consider where was the most appropriate forum for the trial of the action in this case. In concluding that this was Macau, the judge took into account the various connecting factors to Macau, such as the location of the Hotel, the presence of the witnesses and the relevant documents, all of which are in either Chinese or Portuguese, both languages which the Macau courts are well equipped to handle. The judge also considered that the relevant law of duress would be either Macau law or the law of the People’s Republic of China. The burden then shifted to Madam Chen to establish that there were special circumstances why justice required that the trial should nevertheless take place in the BVI. In turn, the judge made the unassailable decision to grant a stay. There is therefore no basis for this Court to interfere with the judge’s conclusions that the natural forum for the action is Macau and that there is no evidence that Macau could not do substantial justice between the parties.

APPLICATIONS AND APPEALS

Case Name:

**Rachel Glenna M. Roberts
v
The Public Service Commission**

**[GDAHCVAP2020/0006]
(GRENADA)**

Date: Monday, 20th September 2021

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

Appearances:

Appellant: Mr. Benjamin Hood

Respondent: Ms. Karen Samuel

Issues:

Civil appeal - Procedural law - CPR 34 - Application for order to compel compliance with request for Information - Whether learned judge failed to have regard to likely benefit if information requested was given - Overriding objective - Whether learned judge failed to consider that order sought was in furthering the overriding objective of the CPR - Costs in public law claims

Type of Order: Oral Judgment

Result and Reasons:

This was an appeal against the decision of the learned judge made on 13th July 2020 in which the judge allowed disclosure partially in relation to paragraph 1 of the appellant's request for information in respect of three named officers as volunteered by the respondent and refused the application in respect of paragraphs 2 and 3 of the appellant's request.

The Court noted that nothing was produced by the appellant to show that the judge erred in the exercise of the principles and the Court can only assume in the absence of any transcript in relation to the proceedings that the court below exercised its power having regard to the Civil Procedure Rules Part 34.2(2)

which states that an order for compelling a party to give information upon an application for a request for information by another party may not be made unless it is necessary in order to dispose fairly of the claim or to save costs.

The Court having had regard to the claim in the court below and the circumstances which were outlined in the affidavits, was of the view that the learned judge was right in his decision to refuse the orders in paragraphs 2 and 3 of the request for information.

The Court further indicated that in public law claims, the court must be satisfied that there was unreasonable conduct on the part of the applicant which would justify making an order of costs against them. The Court was of the view that there was no such unreasonable conduct by the applicant in this case. The Court therefore made no award of costs against the applicant.

The appeal is dismissed with no order as to costs.

Case Name:

John Redhead

v

The Queen

**[GDAHCRAP2015/0006]
(GRENADA)**

Date:

Tuesday, 21st September 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issues:

**Criminal appeal - Appeal against sentence –
Application for leave to appeal to Privy Council**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The application is dismissed for want of jurisdiction.

Reasons:

The Court considered that it lacked jurisdiction to hear and determine the appellant's application for leave to appeal to the Privy Council as jurisdiction to hear such applications is vested in the Privy Council by the Constitution of Grenada.

Case Name:

Joshua Wilson

V

The Queen

**[GDAHCRAP2020/0016]
(GRENADA)**

Date:

Tuesday, 21st September 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Jerry Edwin

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal - Appeal against sentence - Stealing by reason of employment – Section 275 (a) of the Criminal Code of Grenada - Compensation order -

Whether learned judge erred in making compensation order - Whether sentence was manifestly excessive

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The sentence of the judge is varied to the extent that the order of compensation is vacated.**
- 2. The sentence of eight years imprisonment is affirmed.**

Reasons:

The appellant appealed his sentence of 8 years imprisonment and compensation to be paid one year after completion of his sentence in the sum of \$300 per month to be paid on the last working day thereof until paid in full, with two years imprisonment in default. The sentence was imposed consequent upon the guilty plea entered by the appellant in respect of the offense of stealing by reason of employment.

Ten years prior to his arrest, the appellant was employed with the TA Marryshow Community College as an IT technician with the responsibility for repairing and maintaining the College's computers. The appellant was convicted for stealing 27 computers in the course of his employment with the College.

Counsel for the appellant submitted that the sentence imposed was manifestly excessive and advanced arguments in support of that ground. The Court, after listening to and reading the submissions of both the appellant and respondent, was of the view that the sentence of 8 years was not manifestly excessive when the very grave aggravating factors were considered. The Court noted that the appellant pleaded guilty and that this was his first offence.

The Court however did not discern any error on the judge's part in imposing the sentence of 8 years imprisonment.

In respect of the compensation aspect of the sentence, counsel pointed out that it would take the appellant 31 years to pay the compensation in the amount of \$112,968.70 ordered to be paid. The Court, after looking at matters in the round and the justice of the sentence, was of the view that the addition of the compensation aspect rendered the sentence manifestly excessive. The Court therefore determined that that aspect of the sentence ought to be quashed.

Case Name:

Dannel Bonaparte

v

The Queen

**[GDAHCRAP2019/0007]
(GRENADA)**

Date:

Tuesday, 21st September 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Ms. Sabrita Ramdhani, with her, Mr. Darshan Ramdhani QC

Respondent:

Mr. Howard Pinnock

Issues:

Criminal appeal - Appeal against sentence – Robbery with violence – Section 276 (2) of the Criminal Code of Grenada – Section 47 of the Criminal Code (Amendment) Act of Grenada - Whether learned judge erred in failing to consider the delay between guilty plea and date of sentencing – Whether learned judge gave undue weight to previous convictions – Whether learned judge erred in arriving at a starting point in the sentencing process – Whether sentence excessive in all the circumstances

Type of Order:

Oral Judgment

**Result and
Reasons:**

This was an appeal against the sentence imposed by Gilford J of 16 years and 3 months imprisonment for the offence of robbery with violence committed by the appellant on 22nd December 2015. The appellant appealed against this sentence on a number of grounds.

The Court, having listened to and read the submissions and cases cited by counsel on both sides, concluded that the sentence imposed by the learned judge was not manifestly excessive such as to justify the interference by the Court of Appeal.

The Court however deducted from the sentence of 16 years and 3 months, the period of two and a half years between the appellant's guilty plea and the date of his sentencing on 16th April 2019. The Court considered that that period ought to be credited to the appellant in the calculation of his sentence.

Accordingly, the Court upheld the decision of the judge to impose a sentence of 16 years and 3 months but deducted from it 2 years and 6 months which was served by the appellant between the date of his guilty plea on 14th October 2016 and the date of sentencing on 16th April 2019.

The appellant will accordingly serve a term of 13 years and 9 months in prison commencing from the date of sentencing on 16th April 2019 and running concurrently with the sentences already being served by the appellant.

Case Name:

Raul Roberts

v

The Queen

**[GDAHCRAP2018/0016]
(GRENADA)**

Date: Tuesday, 21st September 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Jerry Edwin

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal - Appeal against sentence- Section 181(1) of the Criminal Code of Grenada- Section 19 of the Criminal Code (Amendment) Act of Grenada - Whether sentence excessive in the circumstances

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The sentence imposed by the learned judge is affirmed.

Reasons:

This was an appeal against the sentence of 11 years and 3 months in circumstances where the appellant pleaded guilty to the offence of having sexual intercourse with a child under the age of 15 years.

The Court examined the record of appeal and the ground of appeal advanced by the appellant being that the sentence imposed was manifestly excessive.

Having reviewed the judgment on sentence, the Court was unable to discern any error of principle in the judge's reasoning and therefore found no basis to interfere with the sentence imposed by the learned judge.

The Court also noted the concession by the learned senior crown counsel and indicated an inability to

agree with them. The Court was of the view that the reasoning of the learned judge was impeccable and that the sentence imposed was not manifestly excessive in the circumstances of this case.

Case Name: Grenada Union of Teachers Co-operative
Credit Union Limited
v
Richard Mc Phail et al
[GDAHCVAP2020/0007]
(GRENADA)

Date: Tuesday, 21st September 2021.

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Mr. Alban John, with him, Ms. Vern Ashby
Respondent: Ms. Sandina Date

Issues: Civil appeal - Right of mortgagee to exercise power of sale - Whether learned judge erred by denying application to exercise power of sale at prevailing offer - Whether learned judge erred in law and fact by ordering sale at higher price

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed to the extent that paragraph 2 of the judge's order is varied to read:
"The property shall be sold by private treaty, public auction or otherwise at a price ranging from the highest offer

received by the mortgagee of \$610,000.00 and the highest value contained in the Joseph John and Associates Ltd valuation report of \$665,196.84.”

2. No order as to costs.

Reasons:

This was an appeal against an order of Actie J dated 18th June 2020 by which the learned judge granted an application by the appellant for sale of the respondent’s property by private treaty or otherwise, for the sum of \$665,196.84. The appellant and the respondents were agreed that the obligation of the mortgagee is at its highest “to take reasonable care to obtain whatever was the true market value of the property at the moment he chooses to sell.” This principle was extracted from the case of *Cuckmere Brick Co. Ltd. and another v Mutual Finance Ltd.* [1971] 2 ALL ER which was referred to by the respondents. The respondents also referred to *McHugh v Union Bank of Canada* [1913] AC 299 in which Lord Molton in giving the judgment of the Privy Council stated as follows:

“I conclude accordingly both on principle and authority, that a mortgagee in exercising his power of sale does owe a duty to take reasonable precaution to obtain the true market value of the mortgaged property at the date on which he decides to sell it.”

The Court noted that the evidence before the learned judge, based on the evaluation report ordered by the judge and undertaken by a valuator jointly selected by the parties, was that the property had a market value of \$634,153.48. This was clearly stated at page 10 of the valuation report. Apart from that clear statement of market value, the Court noted that the valuator also made reference to other figures. One such figure was the figure of \$665,196.84 which was described in the valuation report as “a market value by comparison” or “an opinion value” which value could have been obtained with an active marketing period of about 36 months. The valuation report also made reference to the figures of \$465,640.00 and \$532,160.00 which was

estimated as the forced value within 12 months exposure time. In other words, the valuator had opined that “given the current economic conditions and market trends, if one wanted to effect a sale within 12 months exposure time” the forced sale value will be between \$465,640.00 and \$532,160.00.

The Court considered that it was not reasonable for the judge to order that “the property shall be sold by private treaty or otherwise for the sum of \$665,196.84 in accordance with the updated valuation report of 8th June 2020” when the valuation report opined that this price could have been obtained with an active marketing period of about 36 months and when the authorities, including those specifically cited by the respondent, clearly stated that the mortgagee should take reasonable care to obtain whatever was the true market value of the property at the moment he chose to sell it. The Court therefore considered that in the circumstances, the true market value of the property when the mortgagee chose to sell it would have been the forced sale value of between \$465,640.00 and \$532,160.00, or the stated market value of \$634,153.48, or the best offer which the mortgagee said they obtained after extensively advertising the property for sale.

Accordingly, the Court was of the view that the learned judge erred when she ordered the sale for \$665,196.84 when there was no basis in law and fact for the mortgagee to be required to sell the mortgaged property at the moment when he chose to sell it at a value exceeding its market value, exceeding the best price which the mortgagee was able to obtain on the open market and far exceeding the forced sale value of the property which is the value which may be realized from a sale forced upon a mortgagee by a mortgagor’s continuous and continuing neglect to pay the debt secured on the mortgaged property .

The Court concluded that, based on the evidence before her and the applicable legal principles, the judge ought instead to have granted the application by the mortgagee for sale of the property at the value of \$610,000.00 which the evidence before her showed was the best price on offer at the moment when the

mortgagee decided to sell the property. The Court considered that it was likely that there was no longer an offer to purchase the property at that value and that paragraph two of the judge's order should be set aside and replaced it with the following order:

The property shall be sold, by private treaty, public auction or otherwise, at a price ranging from the highest offer received by the mortgagee of \$610,000.00 and the highest value contained in the Joseph John and Associates Ltd. valuation report of \$665,196.84.

Case Name:	Layne Houston v Matthew Hardy
	[GDAHCVAP2021/0015] (GRENADA)
Date:	Wednesday, 22nd September 2021
Coram:	The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Ruggles Ferguson
Respondent:	Ms. Sandina Date
Issues:	Interlocutory appeal – Contract law – Specific performance – Entry of summary judgment – Whether or not appellant has a realistic prospect of success – Whether statement of claim defective – Whether appellant had failed to plead principle of agency – Whether the 2nd defendant was acting as agent of 1st defendant – Whether the judge erred in finding that there was no legally enforceable contract pleaded – Whether there was a separate contract between the parties – Whether judge erred in failing to properly consider legal implication of uncontroverted pleading

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. Paragraphs 1 and 2 of the order of the learned judge are set aside.**
- 3. The counter appeal is dismissed.**
- 4. Costs to the appellant in the sum of \$1,500.00.**

Reasons:

This is an appeal against the order of a judge ordering summary judgment to the respondent. The appellant, who was the claimant in the court below, contended that the judge erred in principle by misapplying or not applying the relevant law and failed to take certain relevant matters into account. The respondent, who was the second defendant in the claim below, filed a counter notice of appeal to affirm the order of the judge on the grounds that the statement of claim failed to establish the relationship of agency between the respondent and his father, Mark Hardy, with regards to the sale of property and the claimant's pleadings failed to establish a lawful connection with the respondent and the sale of the property as agent. Mark Hardy was the first defendant in the court below.

The principles applicable to summary judgments are the court may give summary judgment on a claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or the issue or the defendant as no real prospect of succeeding or successfully defending the claim or the issue.

The central question was whether or not the party has a real prospect of success. The court is directed on the need to see whether there is a realistic as opposed to a fanciful prospect of success. In Easy Air Limited v Opal Telecom Limited [2009] EWHC 339 (Ch) Lewison J (as he then was) set out a list of principles in play in an application for summary judgment. At paragraph 15 he said:

“... the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:

i) The court must consider whether the claimant has a ‘realistic’ as opposed to a ‘fanciful’ prospect of success: Swain v Hillman [2001] 2 All ER 91;

ii) A ‘realistic’ claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]

iii) In reaching its conclusion the court must not conduct a ‘mini-trial’: Swain v Hillman

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases, it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]

v) ... in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550”

The Court noted however that there was no evidence before the Court in this current matter. The Court was of the view that although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment.

The hearing of summary judgment applications is not a trial. The court will therefore only consider the merits of the respondents to the extent that is necessary to determine whether it has sufficient merit to proceed to trial. The question whether the claim has no real prospect of success at trial has to be answered having regard to the overriding objective dealing with cases justly. The point of critical importance is what is the scope of that inquiry. The evidential burden is on the applicant to establish that there are grounds which reveal that the respondent has no real prospect of success. If credible evidence is used in support of the application, then the respondent becomes subject to an evidential burden of proving some real prospect of success.

The Court noted however that in the present matter, the summary judgment was at the behest of the judge. The words 'no real prospect of succeeding' requires the judge to undertake an exercise of judgment. The judge must decide whether to exercise the power to decide the case without a trial and give summary judgment. The power is one of discretion, that is, one where the choice whether to exercise the power lies within the jurisdiction of the judge and the judge must carry out the necessary exercise of assessing the prospects of success of the relevant party. If the judge concludes that there is no real prospect of success he may decide the case accordingly. It is the assessment of the whole that is called upon.

Being a case management decision, the Court considered that the appeal court will likely interfere with such a decision as it is vital for the appeal court to uphold robust, but fair case management decisions. Counsel for the appellant, Mr. Ferguson submitted that the judge fell into error by: 1.) finding that the appellant's failure to plead and particularise the relations of principal and agent between the respondent and his father was a grave omission when the appellant was not in fact relying on agency. 2.) Focusing entirely on the contract for which the appellant's sought specific performance, namely the contract of 10th May 2015, when on the appellant's pleaded case there is a separate contract concluded

with the respondents on 30th April 2015; on the defence there was a submission of a separate contract of 30th April 2015 to ensure that the appellant received the good faith payment from the respondent's father which contractual obligation has not been performed.

3.) Failing to consider the appellant's pleadings regarding the meeting of 10th May 2015 which has not been controverted by the respondent and its relevance to the issue before the court.

4.) Finally, failing to properly consider or at all that there were two different versions of events before the court regarding the events of 30th April 2015, each version has different legal consequences and the court and the trial is required to determine which version of events the court should act on.

In the claim, the relief sought was specific performance of an agreement made on about 10th May 2015 by the respondent to pay the appellant the standard commission of a real estate agent after the appellant acted as an agent to facilitate the sale of the first defendant's house situate on 2 acres and 2 roods of land. He also claimed in respect of 5% commission on the selling price of the house. The learned judge in her judgment noted that the appellant sought specific performance for the respondent for an oral contract and noted the court's discretionary jurisdiction to order specific performance is based on the existence of a valid enforceable contract. The judge discussed the issue of agency and said it was incumbent upon the appellant to have amended the claim to reflect the cause of action against the respondent. The judge dealt with the issue of agency in the judgment and stated that the appellant had failed to plead his case against the respondent for breach of contract or breach of contract as an agent of his father Mark Hardy. It is necessary to refer to some parts of the judgment. The judge began under the rubric "law and analysis" at paragraph 14. At paragraph 16 the judge stated:

"The claimant's pleadings in his statement of claim reads 'The claimant approached the second defendant (Matthew Hardy) about whether the first defendant's dwelling house and entire lot of land situate at Morne Jaloux

was still available for sale'. The claimant avers that he offered his service to the second defendant (Matthew Hardy) to act as agent to get a buyer for the sale of the First defendant's property and to locate a buyer. The claimant avers that the defendants expressed an interest in the service of the claimant would be providing them. Upon accepting the offer the first and second defendants agreed that the claimant would be paid for his service in securing a sale of the property and a standard commission rate as though he was a licensed real estate agent."

The judge continued at paragraph 18:

"It is noted that the issue of agency was only pleaded in the claimant's reply to the Matthew Hardy's defence. In the reply, the claimant pleaded 'that the second defendant presented himself as acting as agent of the vendor'".

The Court interposed Mr. Ferguson's contention that they were not relying on agency.

The Court also considered paragraph 23 and was of the view that it seemed to form the core of the judgment. The judge at paragraph 23 noted:

"The failure to particularize Matthew Hardy's capacity to enter into a binding enforceable contract to grant specific performance, to my mind is a grave omission. The property sold belonged to Mark Hardy, father of Matthew Hardy. It is Mark Hardy who would be the recipient of the proceeds of the sale. It is only upon proof of an existing contract and capacity to enter into a legal binding contract would an order for specific performance be made for the payment of the 5% commission. The pleading in the statement of claim is devoid of a nexus of any legal or arguable case of actual or ostensible authority or agency with respect to Matthew Hardy and his father. The court is of the view that the claimant's claim is

devoid of any legal cause of action or issue against the defendant, Matthew Hardy.”

The Court reviewed the statement of claim and noted paragraph 6 which stated:

“On or about Sunday 10th May 2015, the Claimant met with the First and Second Defendants at the Morne Jaloux property. In that meeting, the Claimant offered his service to the First and Second Defendants to locate a buyer for the Morne Jaloux property. The Defendants were very excited of the prospect of the Claimant securing a buyer, and as such accepted the offer.”

At paragraph 8 it was stated:

“The Defendants expressed their great interest in the service that the Claimant would be providing to them. Upon accepting the Claimant’s offer, the First and Second Defendants, accordingly agreed with the Claimant the following:

- i. That the Claimant would be paid for his service in securing the sale of the Morne Jaloux property;**
- ii. That the Claimant would be paid the standard commission rate for securing the sale of the Morne Jaloux property; and**
- iii. That the Claimant would be paid as though he was a licensed real estate agent in Grenada as he was providing the same service but much faster.**

It appeared to the Court that the learned judge did not pay particular regard to the particulars in that context, as paragraphs 6 and 8 are quite independent of the issue of agency. The appellant sought to plead there that both the respondent and his father expressed interest in the service that appellant would be providing to them and upon accepting the appellant’s offer, they both agreed with the appellant. The Court

was of the view that this was a critical factor which ought to have been engaged by the judge in her reasoning process because the appellant in the submissions were saying that he was not relying on agency albeit it appeared several times in the claim and that these paragraphs evince conditions which reveal the contract between the respondent and the appellant.

The Court also noted the absence of affidavit evidence. It arose by virtue of how the judge conducted the matter, she having raised the issue of summary judgment.

Having regard to the pleadings as indicated and the submissions of the parties and the principles which are applicable to an application for summary judgment the Court was of the view that the judge erred in not paying proper regard to paragraphs 6 and 8 of the pleadings which the appellant averred as forming the basis of the agreement as the case was not based on agency. The Court took into account the submissions of the parties, the pleadings and the judgment and the rules pertaining to an application for summary judgment and also recognised that an appeal court must support robust but fair case management decisions. The Court formed the view the judge's order did not reflect a just determination of the matter. Further, the Court noted that when looking at such applications, the overruling objective of dealing with cases justly must be looked at. The Court was of the view that the judge erred for the reasons indicated.

Case Name:

Claudette Joseph

v

Keith C. Mitchell

**[GDAHCVAP2021/0006]
(GRENADA)**

Date:

Wednesday, 22nd September 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

**The Hon. Mr. Gerard Farara, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Ian Benjamin, SC, with him, Ms. Lisa Taylor

Respondent:

Mr. Nigel Stewart

Issues:

Civil appeal - Defamation - Refusal of application to file a defence out of time - Rule 34 of the Civil Procedure Rules 2000 - Whether master erred in holding that the appellant had not made an application for information under Part 34.2 of CPR - Whether learned master failed to consider relevant factors identified in pleadings - Parts 8.7 and 66.2 of CPR - Delay - Whether master erred in his exercise of discretion - Whether master failed to take into account the reasons for delay

Type of Order:

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Akim Monah

v

The Queen

[GDAHCRAP2014/0002]

(GRENADA)

Date: Wednesday, 22nd September 2021

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

Appearances:

Appellant: Mr. Ruggles Ferguson

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal – Application for bail pending appeal –
Unavailability of transcript of proceedings

Type of Order: Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The directions given on 13th September 2021 are hereby varied as follows:

1. The appellant shall file and serve written submissions in respect of his appeal against sentence no later than 8th October 2021.
2. The respondent shall file and serve written submissions in response no later than 22nd October 2021.
3. The appeal is fixed for hearing during the sitting of the Court for the Commonwealth of Dominica commencing Monday 22nd November 2021, with a time estimate of 1 hour.

Reasons: The Court issued directions after considering that the circumstances had changed in that the transcript was now prepared and was made available to the parties. In

light of the changed circumstances, the Court did not proceed to hear and determine the bail application.

Case Name: **Shenel Fortune**
v
The Queen
[GDAHCRAP2020/0017]
(GRENADA)

Date: **Wednesday, 22nd September 2021**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal
[Ag.]

Appearances:
Appellant: **Mr. George Prime**
Respondent: **Mr. Howard Pinnock**

Issues: **Criminal appeal - Appeal against sentence – Stealing by reason of employment – Section 275 (a) of the Criminal Code of Grenada - Age as a mitigating factor in sentencing – Whether learned judge erred in consideration of age in sentencing - Whether learned judge erred in imposing a custodial sentence and an order for compensation - Whether sentence inappropriate in circumstances**

Type of Order: **Oral Judgment**

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

- 1. The appeal against sentence is allowed in part.**
- 2. The custodial sentence of 8 years 8 months is affirmed and the compensation aspect of the sentence is quashed.**

Reasons:

This was an appeal against sentence imposed in the court below in relation to a guilty plea to a charge of stealing by reason of employment. The appellant was sentenced to 8 years and 8 months' imprisonment and ordered to pay compensation in the sum of \$84,434.20 by monthly installments of \$500.00, until paid in full, the first payment to be made 1 year after sentence was served and thereafter on the last working day of each month, in default three years imprisonment.

The Court was of the view that the learned judge properly carried out the sentencing exercise, having considered the relevant factors, including the aggravating and mitigating factors. The Court therefore found no reason to disturb the learned judge's discretion.

The Court was of the view that from the record, it was clear that the appellant did not have the means to pay the compensation ordered and was not likely to have the means to pay it after her release from prison. This would amount to a sentence by default which would have been unduly harsh when the totality of the context of the case was considered. Therefore, the Court quashed the compensation order in respect of the sentence.

The Court was of the considered view that in the particular circumstances of this case, to impose both the custodial sentence and the compensation order with a default punishment of a further three years imprisonment was wrong in principle and was therefore minded to quash the compensation aspect of the sentence.

Case Name:

Isaac Gilbert

v

The Queen

**[GDAHCRAP2015/0007]
(GRENADA)**

Date: Wednesday, 22nd September 2021

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

Appearances:

Appellant: Mr. George Prime

Respondent: Mr. Howard Pinnock

Issues: Criminal appeal – Appeal against sentence – Murder -
Whether learned judge erred in exercising discretion
on sentencing - Whether sentence is manifestly
excessive

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The sentence is affirmed.

Reasons:

This was an appeal against sentence of 30 years imposed by the trial judge in respect of murder following a guilty plea. It could not be discerned from the record the factors which the learned judge considered in arriving at the sentence imposed.

In the exercise of the discretion afresh, the Court considered that the aggravating factors, including the violent history of the appellant, significantly outweighed any mitigating factors. The Court noted that the appellant benefitted from the sentence of 30 years and noted that the Court could increase the sentence. The Court was of the view that in the circumstances, there was no need to interfere with the sentence of 30 years imposed by the learned judge. Taking account of the appellant's guilty plea and deducting the time spent on remand, from 30th July

2012 to May 2015, which amounted to 34 months, the Court reduced the sentence to 27 years and 2 months.

Case Name:

**Kevon Paul
v
The Commissioner of Police
[GDAMCRAP2021/0004]
(GRENADA)**

Date:

Wednesday, 22nd September 2021

Coram:

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

Appearances:

Appellant:

In person

Respondent:

Mr. Howard Pinnock

Issues:

**Magisterial criminal appeal against sentence –
Housebreaking and stealing - Section 95(1) and
104A(1) of the Criminal Code of Grenada – Whether
sentence excessive in the circumstances - Whether
learned magistrate committed an error in principle in
sentencing the appellant**

Type of Order:

Oral Judgment

Order:

IT IS HEREBY ORDERED THAT:

**The sentence of five years for each offence is
substituted with a sentence of two years for each
offence, the sentences to run concurrently.**

Reasons:

**The appellant pleaded guilty to the offences of
housebreaking and stealing, contrary to section 95(1)
and 104A(1) of the Criminal Code of Grenada, and was**

given the maximum penalty of 5 years imprisonment for each offence, with the sentences to run concurrently. The appellant was dissatisfied with his sentence and appealed to this Court. He complained that he did not get a deduction for his early guilty plea, that he cooperated with the police in their investigation and that all the stolen items were returned.

The Court was of the view that the Magistrate committed an error in principle in sentencing the appellant on each of the offences to the maximum of five (5) years.

In the exercise of its discretion afresh and having considered the aggravating factors including the prior convictions for similar offences and the mitigating factors, coupled with the fact that he was entitled to a discount for his early guilty plea, the Court was of the view that the sentences of 5 years should be substituted for 2 years for each offence, the sentences to run concurrently.

Case Name:

**Ricardo Prescott
v
The Commissioner of Police
[GDAMCRAP2021/0005]
(GRENADA)**

Date:

Wednesday, 22nd September 2021

Coram:

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

Appearances:

Appellant:	In person
Respondent:	Mr. Howard Pinnock

Issues: Magisterial criminal appeal against sentence –
Defrauding by false pretence - Section 97(1) of the
Criminal Code of Grenada - Whether sentence
excessive in the circumstances

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The sentence imposed by the Magistrate is affirmed.

Reasons: The appellant pleaded guilty to the offence of defrauding by false pretence contrary to section 97(1) of the Criminal Code of Grenada and was sentenced to 17 months' imprisonment, having received a discount of 6 months for good character as he had no prior convictions. The appellant, being dissatisfied with the sentence, appealed contending that he ought to have received a reduced sentence or a fine based on his attempt to compensate the complainant.

The Court was of the considered view that, in the circumstances, the Magistrate committed no error in principle in the sentencing process and that the sentence imposed was appropriate in the circumstances. Accordingly, the appeal against sentence was dismissed and the sentence imposed by the learned magistrate affirmed.

Case Name: Enroy Williams
v
The Commissioner of Police
[GDAMCRAP2020/0006]
(GRENADA)

Date: Wednesday, 22nd September 2021

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

Appearances:

Appellant: No appearance

Respondent: Mr. Howard Pinnock

Issues: Magisterial appeal against sentence – Adjournment –
No proof of service of notice of hearing on appellant

Type of Order: Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appeal is adjourned to the next sitting of the Court of Appeal in the State of Grenada during the week commencing 4th April 2022.
2. The Registrar of the High Court is directed to make all efforts to serve the appellant with a fresh notice of the matter to be heard during the next sitting of the Court of Appeal in Grenada in the week commencing 4th April 2022 and thereafter to set out by affidavit, the efforts made prior to the directions and also, if service has not been effected, the efforts made to serve for the sitting of the Court in April 2022.

Reasons: The Court was informed by the Registrar of the High Court that all attempts to serve the appellant have proven futile as he cannot be located. The Court was of the view that the appropriate course of action was to adjourn the hearing of the appeal to the next sitting of the Court in the State of Grenada.

Case Name:

**Joel Dewsbury
v
The Commissioner of Police
[GDAMCRAP2020/0007]
(GRENADA)**

Date:

Wednesday, 22nd September 2021

Coram:

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

Appearances:

Appellant: No appearance

Respondent: Mr. Howard Pinnock

Issues:

**Magisterial criminal appeal against sentence – No
proof of service of notice of hearing on appellant –
Completion of sentence before hearing of appeal**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

**On the basis that the appellant has served his entire
sentence and the appeal was against sentence only
and the appellant has shown no interest in the pursuit
of his appeal, the Court hereby strikes out the appeal.**

Reasons:

**Counsel for the respondent indicated that the
appellant had already served his sentences. The Court
considered that since the appeal was against sentence
and the appellant has already served his sentence and
further showed no interest in the status of his appeal,
the Court struck out the appeal for want of
prosecution.**

Case Name:

**John Regis
v
The Commissioner of Police
[GDAMCRAP2020/0005]
(GRENADA)**

Date:

Wednesday, 22nd September 2021

Coram:

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

Appearances:

Appellant:

Mr. Henry Paryag

Respondent:

Mr. Howard Pinnock

Issues:

**Magisterial criminal appeal against sentence –
Adjournment – Failure to prosecute appeal**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is hereby struck out for the appellant's failure to pursue and prosecute his appeal. Accordingly, the compensation ordered to be paid by the appellant shall be paid within one month of today's date and in default, 12 months' imprisonment.

Reasons:

The Court considered all the circumstances put forward by counsel on behalf of the appellant and the reasons put forward by him in seeking a further adjournment of the hearing of the appeal.

The Court took into account that the directions given by the Court in April 2021 which included filing submissions and an amended notice of appeal, were not carried out. Counsel indicated that the appellant was currently out of the state of Grenada and was in the United States of America. The Court noted that the appellant appeared to have left the state shortly after the last adjournment was granted in April and from all accounts did not seem to have ever made contact with his counsel or sought in any way to instruct him for the due prosecution of his appeal, even on the additional ground of appeal which raised solely a question of law.

The Court was of the view that it could only reasonably infer that the appellant, despite counsel's best efforts, had shown no interest in prosecuting his appeal. Granting a further adjournment of the appeal was not in the interest of justice, having regard to the fact that the appellant, while not prosecuting his appeal, enjoyed as matter of law a stay of a compensation order granted in favor of the virtual complainant.

Case Name:

**William Dinnall
v
The Commissioner of Police
[GDAMCRAP2020/0003]
(GRENADA)**

Date:

Wednesday, 22nd September 2021

Coram:

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

Appearances:

Appellant: No appearance

Respondent: Mr Howard Pinnock holding for Christopher Nelson QC

Issues: Magisterial appeal against sentence – Bail pending appeal - Bench warrant

Type of Order: Directions

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. A bench warrant shall issue in respect of the appellant for the purpose of bringing him before the Court.
2. Upon execution of the bench warrant, the registrar is to be informed and a date fixed for the appellant to be brought before the court.
3. Until return of the bench warrant, the matter is adjourned for further hearing.

Reasons: The Court noted that the appellant was released on bail pending appeal on 20th July 2020 and was personally served with notice of the hearing of the appeal on 28th May 2021 and no explanation was given for his absence.

In the circumstances, the Court was mindful to issue a bench warrant in respect of the appellant for the purpose of bringing him before the court.

Case Name: Elvin Phillip
v
The Queen

[GDAHCRAP2020/0001]
(GRENADA)

Date: Wednesday, 22nd September 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant: In person

Respondent: Mr. Howard Pinnock

Issues:

**Criminal appeal – Appeal against sentence –
Defrauding by false pretence - Whether learned trial
judge failed to consider guilty plea at first opportunity-
Whether sentence excessive - Delay in transcript**

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The conviction is affirmed.**
- 2. The sentence is varied to time served.**

Reasons:

This was an appeal against sentence of 3 years imprisonment with orders for compensation, following a guilty plea, imposed by the learned judge on 28th February 2020.

The transcript of proceedings was still outstanding, and the respondent indicated that by the time it is prepared, the appellant would have served his sentence.

The Court considered the inordinate delay in production of the transcript, which was no fault of the appellant, and was of the view that the interest of justice required that the sentence should be varied. The respondent conceded to this order.

Case Name:

**Donald Bridgeman
(Also Called Earl Gerald Bridgeman)
v
HKZ Inc**

[GDAHCVAP2021/0011]

(GRENADA)

Date: Thursday, 23rd September 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Ruggles Ferguson, with him, Mr. Andre Thomas
Respondent: Ms. Gennilyn Etienne

Issues: Civil appeal – Interlocutory appeal - Interim injunction – Sale of land – Whether advertisement amounted to offer - Oral agreement – Part performance - Whether there was a valid contract for sale - Section 4 of the Real and Personal Property Act (Special Provisions) of the Laws of Grenada - Failure to plead existence of oral agreement – Whether learned judge erred in holding that there was a serious issue to be tried in the circumstances – Balance of convenience – Whether learned judge erred in law in holding balance of convenience laid in granting the injunction – Whether learned judge erred in holding that the appellant would be sufficiently compensated if claim failed – Whether discretion of judge to grant injunction wrongly exercised in all the circumstances

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Aiham Shammass

V
SGL Holdings Inc. et al

**[GDAHCVAP2016/0020
(GRENADA)]**

Date: Thursday, 23rd September 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Gerard Farara, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Andre Thomas holding papers for Mr. Anselm Clouden

Respondent: Ms. Celia Edwards, QC, with her, Ms. Celene Edwards

Issues: Civil appeal – Application for adjournment

Type of Order: Adjournment

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

The adjournment is granted at the request of counsel for the appellant as a result of personal circumstances and the matter is adjourned to the next sitting of the Court of Appeal scheduled for Grenada during the week commencing 4th April 2022.

Reasons: Counsel for the appellant sought an adjournment for personal reasons and counsel for the respondents made no objection.

The Court was minded to grant the adjournment given the personal circumstances related to COVID-19 and adjourned the hearing of the appeal to the next

scheduled sitting of the Court for Grenada for the week commencing 4th April 2022.

Case Name:

Raul Roberts

v

The Queen

[GDAHCRAP2018/0016]

GRENADA

Date:

Friday, 24th September 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Mr. Christopher Nelson, QC

Issues:

Criminal appeal - Appeal against sentence- Section 181(1) of the Criminal Code of Grenada- Section 19 of the Criminal Code (Amendment) Act of Grenada - Whether sentence excessive in the circumstances

Type of Order:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal against sentence is allowed to the extent that the period of 11 years and 3 months imprisonment is varied to 8 years imprisonment.

Reasons:

The Court noted that in the judgment of the learned judge, the judge indicated that she would have granted a reduction of one quarter discount for the guilty plea which was not made at the first opportunity. The Court

agreed that that was the appropriate discount in the circumstances of the case. Upon further reflection however, the Court noted that while the learned judge stated that the discount would have been granted, the learned judge in computing the sentence did not actually grant the one quarter discount. Accordingly, the Court was minded to grant the discount and vary the sentence to a term of imprisonment of 8 years, taking into account the time spent on remand.

Case Name:

**Eliza Thompson
v
Catherine Thompson
[GDAHCVAP2021/0002]
(GRENADA)**

Date:

Friday, 24th September 2021

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal
[Ag.]**

Appearances:

**Appellant: Ms. Celia Edwards, QC, with her, Ms. Celene Edwards
Respondent: Mr. Alban John, with him, Ms. Vern Ashby**

Issues:

Civil appeal – Deed of Gift – Interpretation of Deed of Gift – Intention of Deed of Gift – Whether learned judge erred by failing to adequately consider the intention of grantor - Section 32 of the Conveyancing and Law of Property Act of Grenada – Whether Conveyancing Act supersedes provisions of Deed - Whether learned judge erred in considering purported devise in will in construing Deed of Gift which preceded the will - Costs

Type of Order:

N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: **The Attorney General et al
v
The Grenada Bar Association**

**[GDAHCVAP2021/0018]
(GRENADA)**

Date: **Friday, 24th September 2021**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:	Mr. Darshan Ramdhani QC, with him, Ms. Dia Forrester, Ms. Alleyna Cheesman and Ms. Sabrita Ramdhani
Respondent:	Mr. Ruggles Ferguson

Issues:	Civil appeal – Interlocutory appeal – Application for representation order – Principles in determining whether representative action can be brought - Right to fair trial - Section 8 of the Constitution of Grenada – Whether learned trial judge erred in finding that every litigant before the court was likely to have fair trial right breached – Section 15 of the Constitution of Grenada - Whether learned judge erred in assessment of whether litigants and claimants shared same interest - Locus standi – Section 16 of the Constitution of Grenada - Whether learned judge erred in finding that the Grenada Bar Association had standing to seek redress under section 16 of the Constitution of Grenada – Whether learned judge erred in failing to consider availability of alternative remedies
Type of Order:	N/A
Result / Order:	[Oral Delivery] IT IS HEREBY ORDERED THAT: Judgment is reserved.