

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT LUCIA
1st – 5th JULY, 2019

APPLICATIONS AND APPEALS

Case Name:

[1] Donald James Scarborough
[2] Betty Jane Scarborough
[3] David Bray
[4] Caroline Bray
[5] Bruce Anthony Gill
[6] Sandeep Bhatia
[7] Alastair Quinn Taylor
[8] Nichola Quinn Taylor
[9] John Jackson Miller
[10] Anne O'Malley
[11] Andrea Smith
[12] Christopher Smith
[13] Tony King

v

[1] Sunset Village
[2] First Caribbean International Bank
(Barbados) Limited
[3] Oliver Jordan (Liquidator)

[SLUHCVAP2017/0040]

Date:

Monday 1st July, 2019

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Humphrey Sollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Colin Foster

Respondent: Mr. Bota McNamara for the 1st and 3rd Respondent
Ms. Renee T. St. Rose with her Ms. Rowana - Kay Campbell for the for the 2nd Respondent

Issues: Civil Appeal – Winding up proceedings – Whether the learned judge erred in ordering that the matters complained of ought to be addressed in the winding up proceedings by invoking Sections 406 and/or 407 of the Companies Act – Costs

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The Appeal is dismissed.
2. The appellants are to personally bear costs in the appeal in the sum of \$1500 to the 1st and 3rd respondents and \$1500 to the 2nd respondent, to be paid within 21 days.

Reason: The learned judge was quite correct to point out, in her order dated 28th September 2017, that the matters complained of by the appellants were matters that ought to be raised in the winding up proceedings, rather than seeking to bring a separate and independent action or claim outside of the winding up proceedings. The appropriate avenue could have been pursued and the matters raised, by invoking Sections 406 and/or 407 of the Companies Act. The learned judge clearly pointed out that through that avenue, no leave of the court was required.

There was no basis for joining the bank to the proceedings on the basis of some sort of indemnity. All that was awarded was costs on an indemnity basis to 2nd respondent bank.

For these reasons the appeal is without merit.

Case Name:

Claire Seraphine Wallace

v

Michael E. Bruney

[DOMMCVAP2018/0001]

Date:

Monday 1st July, 2019

Coram:

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

Appearances:

**Appellant: Ms. Arthlyn Nesty with her Mr. Clement Joseph,
appellant present**

Respondent: Ms. Lisa Defreitas, respondent present

Issues:

Magisterial Civil Appeal –Whether a retrial ought to be ordered – Whether the respondent’s mail was willfully delayed and willfully detained – Whether there was evidence to support the allegations of willful delay and willful detention

Type of Order

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Appeal is allowed**
- 2. There shall be no retrial of the matter on the charges brought.**

Reason:

The Court having regard for the respondents concession on ground 2 of the grounds of appeal and having considered the guidelines set out in the case of Allen Baptiste v The Queen BVIHCRAP2013/0003 and BVIHCRAP2013/0004 the Court does not consider it to be in the interest of justice of either of the parties to order a new trial, given the lapse of time and quality of the evidence presented. The offences were not made out on the facts of the case.

Case Name:

**[1] Cyril Herelle
[2] Cyril Herelle Administrator of the Estate of
Lima Herelle**

V

**[1] The Cabinet of Ministers
[2] The Water and Sewerage Company Inc**

[SLUHCVAP2019/0001]

Date:

Monday 1st July, 2019

Coram:

Appearances:

Appellant:

**Mr. Dexter Theodore QC with him, Ms. Sueanna
Frederick**

Respondent:

**Mr. Rene Williams, with him, Mrs. Tina Louison for the 1st
Respondent
Mr. Andie George with him, Ms. Sherene Francis and Ms.
Nicola George-Benjamin for the 2nd Respondent**

Issues:

**Interlocutory Appeal – Appeal against judge’s refusal of
leave to file a judicial review claim – Application heard
only in chambers – CPR 56.4(3)(c)**

**Type of Oral
Result / Order
Delivered
(if applicable):**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Appeal allowed.**
- 2. The application for leave to file judicial review
proceedings is remitted to the court below to be dealt
with by a different judge.**

Reason:

The appeal arose from the decision of a High Court judge to refuse the appellants leave to file a claim for judicial review. Both the appellants and the respondents filed documents for the court's consideration following which the learned judge indicated her intention to consider the application on the papers only. The parties consented to this course. On 5th November 2018 the judge delivered a written judgment by which the applicants were refused leave.

The Court took the view that the learned judge made a fundamental error in her approach to the application. Having been minded to refuse leave, the judge was required by rule 56.4(3)(c) of the Civil Procedure Rules 2000 to hold a hearing in open court. This was not done. Accordingly the judgment entered was irregular.

In light of the Court's view that the learned judge erred in her approach to the application, the Court was invited to consider and determine the application for leave on the basis of the documents filed in the appeal. The Court however observed that while this course was available, there were other issues raised in the matter concerning the propriety of the parties joined, which are best suited for determination by a judge of the High Court.

Case Name:

**Elesia Crisp
v
The Attorney General
[SLUHCVP2017/0038]**

Date:

Tuesday 2nd July 2019

Coram:

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Rene Williams, with him Mr. Kurt Thomas

Issues: Civil Appeal – Breach of Protection of Law Clause of the Constitution – Section 1 of the Constitution of Saint Lucia – Whether the evidence was sufficient – Whether the learned judge applied the correct test – Whether the reason for the issuance of the summons was correct

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal is dismissed with no orders as to costs

Reason: The Court has come to the conclusion that the summons to Ross Bowring was properly issued and that there was service of it.

Whether a subsequent summons to appellant was issued for the purpose of coming to give information as to whereabouts of her husband as opposed to accident which took place.

We have reviewed the evidence. Given the role of appellate Courts, we do not think that the trial judge erred in her coming to the findings of fact.

Case Name:

[1] Malmaison Properties LLC
[2]. Drake Intertrade Limited
[3] Drake Resort Limited
[4] Drake Marina Limited
[5] Drake Marina Village Limited
v
[1] Jeffrey Coyne
[2] Doubloon Hotel Limited (In Receivership)
[3] Doubloon Marina (St. Lucia) Limited (In Receivership)
[4] The Bank Of Nova Scotia

[SLUHCVAP2018/0015]

Date: Tuesday 2nd July 2019

Coram:

Appearances:

Appellant: Mr. Leslie Prospere

Respondent: Mr. Deale Lee

Issues: Civil Appeal – Doctrine of Merger – Whether the learned judge failed to apply or properly apply properly the principles of merger - Whether the Acquisition Agreement was merged and therefore extinguished by the deeds of sale and assignment of lease

Type of Order N/A

Result / Order:
[Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Reason:

Case Name: Helen Television System Limited
v
Victoria Alcide

[SLUHCVAP2017/0053]

Date: Tuesday, 2nd July 2019

Coram:

Appearances:

Appellant: Mr. Dexter Theodore, QC with him Ms. Sueanna Frederick

Respondent: Mr. Sahleem Charles, with him, Ms. Rowana-Kaye Campbell

Issues: Civil appeal – Libel – assessment of damages following entry of default judgment – Assessment of damages remitted by Court of appeal – Whether learned judge erred in awarding general damages in the sum of \$100,000.00 – Whether the learned judge erred in awarding exemplary damages in the sum of \$15,000.00 and aggravated damages in the sum of \$20,000.00 on the same basis – Whether exemplary damages appropriate

Counter notice – Whether judge bound to follow the first judge’s assessment or provide reasons for the departure therefrom

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is allowed to the extent that the award of exemplary damages is set aside, and the counterclaim of the respondent is dismissed in its entirety.
2. The appellant is awarded costs being 1/3 of the normal costs (2/3) of the appeal and full costs (2/3 of the costs in the court below) on the counter notice of appeal

Reason: In an assessment of damages subsequent to a suit brought by the respondent, Victoria Alcide, against Helen Television System Ltd the learned judge ordered general damages to Victoria Alcide of \$100,000.00, aggravated damages in the sum of \$20,000.00 and exemplary damages in the sum of \$15000.00. The appellant has appealed against the orders of the judge and has filed several grounds of appeal. The appellant takes issue with the quantum awarded in respect of general damages and also with the award of exemplary damages and aggravated damages.

The Respondent, Victoria Alcide, has filed a notice of counterclaim also taking issue with the quantum of damages (general, aggravated and exemplary) contending that the awards ought to be increased.

It would be instructive to pay regard to the law which governs the assessment of damages as set out by this Court in *Alphonso v Ramnath* 56 WIR 183, a case from the British Virgin Islands.

In this case, Singh JA set out the relevant principles which would guide this Court with respect to a challenge to the award of damages granted by the High Court Judge. The award of damages is a matter for the exercise of the trial judge's discretion and the burden rests on the appellant who invites the Court to interfere with an award of damages that has commended itself to a trial judge is a heavy one. The assessment of damages is peculiarly in the province of the judge. If the judge had taken all the proper elements of damage into account and had awarded what he deemed to be fair and reasonable compensation under all the circumstances of the case, the appeal court ought not, unless in very exceptional circumstances, to disturb his award. The mere fact that the judge's award is for a lower or smaller sum than the appeal court would have given is not of itself a sufficient reason for disturbing the award made by the trial judge but the appeal court is powered to interfere with the award if it is clearly of the opinion that having regard to the circumstances of the case, it cannot find any reasonable proportion between the amount awarded and the loss sustained or if the damages are out of all proportion to the circumstances of the case. The appeal court will also interfere if the judge misapprehended the facts, took into account irrelevant factors or applied the wrong measure of damages which made his award a wholly erroneous estimate of the damage suffered. So the award of damages is the exercise of a trial judge's discretion and unless we can say that the award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly or blatantly wrong we will not interfere. This is the guidance given by this Court by Singh JA in *Alphonso v Ramnath* 1997 56 WIR 184

Applying the principles enunciated by this Court, we are not of the view that there is any proper basis to disturb the award of \$100,000 awarded by the trial judge as general damages. In his judgment, the trial judge reasoned how he arrived at the sum. He begins his discussion of general damages at paragraph 18 of the judgment. He noted that “The story on prime time news must have been as damaging to her reputation, if not more, as corruption leveled at a thick-skinned politician. Apart from being on the evening news, the story would have attracted more than the usual attention since it: (1) had the salacious element of female prison officers and male inmates; and, (2) featured the sensational element of Ms. Alcide being intimately involved with the popular soca artist, Ninja Dan.”

At para 19 the judge said: “Taking all of this into consideration, as well as the fact that an award of general damages should be reasonably adequate for the purpose of assuaging the injury to a claimant’s reputation and to hurt her feelings, I consider that the appropriate award of compensatory damages should be \$100,000.00.” Before coming to his conclusion, the judge had indicated at paragraph 7 as follows: “It would seem that the starting point in this assessment is to consider the gravity of the libel to determine a suitable compensatory award and then go on to consider and weigh up any aggravating and/or mitigating factors.” The judge also referenced *John v MGM Ltd [1996] 2 All ER 35*, at paragraph 10 of his judgment which stated that: “... apart from the gravity of the libel, the extent of the publication was also relevant. It was not in dispute that HTS is a prominent television station in Saint Lucia, its news broadcast was widely available and on the internet and therefore was as extensive as any publication could be in Saint Lucia. As regards, its impact, Ms. Alcide’s evidence was that she suffered public opprobrium.”

The judge concluded at paragraph 10 that “the gravity of the allegation combined with the extent of its publication and the injury to Ms. Alcide register it at a high order of magnitude on the libel scale”. He asked the question, “what is the appropriate award to compensate her for the embarrassment, humiliation and damage to reputation” and granted the award of \$100,000.00.

The Court does not find that there was any error in the judge's assessment and the quantum he arrived at. Therefore, the Court finds no basis at all to disturb the discretion of the judge in terms of the award of the sum of \$100,000.00 for general damages.

As stated above, the appellant had also taken issue with the award of aggravated damages as well as exemplary damages contending that no award had to be made under these two heads and if an award were made it ought to be reduced. The Respondent had filed a counter notice of appeal. In that regard they had taken issue with the award of \$100,000.

The Respondent had also advanced the view that the quantum awarded with respect to aggravated damages and exemplary damages ought to be upped. The appellant's view was that none of these heads ought the granted and in any case the amount granted should be reduced.

The Court was of the view that, having regard to the law with respect to the award of exemplary damages and given the facts of the matter, the learned judge erred in awarded exemplary damages.

With respect to aggravated damages, the Court considered the factors which occasioned this award. Having read the judge's judgment the Court found no basis to upset the exercise of his discretion in terms of the award of \$20,000.00 for aggravated damages.

Case Name:

Allen Chastanet

V

Ernest Hiliare

[SLUHCVP2019/0005]

Date:

Wednesday, 3rd July 2019

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:

Appellant: Mr. Garth Patterson, QC with him, Mr. Mark Maragh
Respondent: Ms. Renee St. Rose, with her Mr. Thaddeus Antoine and Ms. Ann-Alicia Fagan

Issues:

Civil Appeal — Interlocutory Appeal — Whether United Kingdom Defamation Act 2013 applies to Saint Lucia — Whether defences of justification and fair comment codified by Civil Code of Saint Lucia — Whether Civil Code provides for the importation of the statutory defences to defamation under UK Defamation Act 2013

**Type of Oral
Result / Order
Delivered
(if applicable):**

N/A

Result / Order:

**[Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Reason:

N/A

Case Name:

**[1] Della Vallery Nolan nee Jude
[2] Beverley Jude-Porter**

v

**[1] Diane Jude
[2] Vandyke Jude**

[SLUHCVAP2017/0025]

Date:

Wednesday 3rd July 2019

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mrs. Maureen John-Xavier

Respondent: Mr. Dexter Theodore QC with him Ms. Sueanna Frederick
1st Respondent
Mrs. Petra Nelson with Mrs. Esther Greene Ernest 2nd
Respondent

Issues: Civil Appeal – Whether the learned trial judge erred in dismissing the claim in its entirety – Prescription – Whether all of the causes of action were prescribed – Whether, in the matters relating to undue influence, unconscionable bargain and conflict of interest, the period for prescription begins to run from the time the attorney/client relationship ceased – Whether, in the matters relating to abuse of trust and confidence, no prescription applies – Whether the learned judge erred in coming to his factual findings in the face of the deed evidence

Type of Order: N/A

Result / Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Reason:

Case Name: Brandon Charles
v
The Attorney General
[SLUHCVAP2017/0039]

Date: Thursday, 4th July 2019

Coram:

Appearances:

Appellant: Mr. Thaddeaus M. Antoine holding papers for Mr. Gerard Williams

Respondent: Mr. George Charlemagne with him, Mr. Kareem Alleyne and Mrs. Antonia Charlemagne

Issues: Application for adjournment of hearing of appeal

Type of Order Adjournment

Result and Reason: [Oral Delivery]
On the application of the appellant due to the illness of learned counsel Mr. Gerard Williams, and there being no objection to the application for adjournment by the respondent, the hearing of the appeal is adjourned to the next sitting of the Court in the State of St. Lucia during the week commencing 25th November 2019

Reason:

JUDGMENTS

Case Name: Eastern Caribbean Collective Organisation For Music Rights (Ecco) Inc. (Formerly Hewanorra Musical Society (Hms) Incorporated)
v
Mega-Plex Entertainment Corporation

[SLUHCVP2016/0021]

Date: Thursday, 4th July 2019

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

**The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Dexter Theodore, QC with him, Mr. Thaddeus M. Antoine

Respondent: Ms. Cleopatra McDonald

Issues:

Application for conditional leave to appeal to Her Majesty in Council – Appeal concerning question of standing of applicant to sue respondent on behalf of copyright owners for copyright infringement – Whether appeal lies as of right pursuant to section 108(1)(a) of Constitution of Saint Lucia – Whether applicant satisfies threshold for grant of conditional leave pursuant to section 108(2)(a) – Whether question involved in appeal is one that by reason of its great general and public importance, or otherwise ought to be submitted to Her Majesty in Council

**Result and
Reason:**

HELD: dismissing the application and awarding costs to the respondent in the sum of \$3000.00, that:

- 1. ECCO is not entitled to leave to appeal to Her Majesty in Council as of right under section 108(1)(a) of the Constitution because the Court of Appeal's order is not a final order and the matter in dispute is not of the prescribed value of \$1,500.00 or more. The sole issue decided by the Court of Appeal was the preliminary issue of ECCO's standing to sue Mega-Plex for copyright infringement. The resulting judgment of the Court on this issue was therefore an interlocutory judgment requiring leave to appeal to the Privy Council pursuant to section 108(2)(a) of the Constitution.**

Rule 62.1(3) of the Civil Procedure Rules 2000 applied; Daryl Sands Controller of Bank of Crozier Limited v Garvey Louison Liquidator of Bank of Crozier Limited (in liquidation) et al GDAHCVAP2007/0001 (delivered 16th September 2008, unreported) followed.

2. A person applying for conditional leave to appeal under section 108(2)(a) of the Constitution must satisfy the Court of Appeal that the issue arising on the appeal is one of great general or public importance by virtue of being a serious issue of law that has not been settled, or an area of law in dispute, or a legal question the resolution of which poses dire consequences for the public. The findings of the Court of Appeal do not suggest that the Court was dealing with difficult or serious issues of law, areas of the law that are unsettled, or any matter of great general or public importance for which guidance of the Privy Council is needed. ECCO has failed to meet the required threshold.

Martinus Francois v Attorney General
SLUHCVP2003/0047 (delivered 7th June 2004, unreported) followed; Olasemo v Barnett Ltd (1995) 51 WIR 191 applied.

Reason:

APPLICATIONS AND APPEALS

Case Name:

**The Comptroller of Customs
v
China Town Inc.**

[SLUHCVP2018/0001]

Date:

Thursday, 4th July 2019

Coram:

Appearances:

Appellant: Mr. Dexter Theodore, QC with him, Mr. Kurt Thomas, Crown Counsel

Respondent: Mr. Vandyke Jude with him, Mr. Mervin Steele

Issues:

Civil appeal – Judicial review claim – Constitutional relief sought in judicial review application – Whether Attorney General ought to be a named a party to the claim – Whether non-joinder of the Attorney General as a party is fatal to the claim

Customs Control and Management Act – Power of seizure pursuant to section 130 – Whether seizure disproportionate in light of infractions allegedly committed under sections 113 and 114 of the Act – Whether the judge erred in law and in fact by holding that the seizure was improper and procedurally wrong and in breach of section 6 of the Constitution of St. Lucia

Failure of Comptroller to institute condemnation proceedings following issuance of a notice of seizure as required by the Act within a reasonable time – Delay of 3 months from date of seizure to date of application for leave to file judicial review claim – Whether the filing of an application for leave to institute judicial review proceedings prohibits the institution of parallel proceedings for condemnation

Restoration fee – Calculation of restoration fee – Whether restoration fee inordinate or excessive

Damages – Whether the judge was wrong to rule that the respondent was entitled to aggravated, or any damages

Type of Order

N/A

Result / Order:

**[Oral delivery]
IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Reason: