

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL

AUDIOCONFERENCE
ANGUILLA
WEDNESDAY 22nd APRIL 2020

APPLICATION

Case Name: [1] The Anguilla Electricity Co. Ltd.
[2] Harold Raun, Chairman
[3] Dawnette Gumbs, Director

v

The Attorney General of Anguilla
(in right of the Government of Anguilla)

[AXAHCVAP2020/0008]

Date: Wednesday, 22nd April 2020

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

Appearances:

Applicants/ Appellants:	Mr. Frank Walwyn, instructed by Mr. Carlyle Rogers and Mr. Chesley Hamilton and Ms. Nadia Chiesa holding a watching brief
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Respondent:	Mr. Dwight Horsford, Attorney General, and Ms. Erica Edwards, Senior Crown Counsel
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Issues: Civil appeal – Application for stay of execution of order
requiring Annual General Meeting to be convened –
Sections 130, 134 and 268 of the Companies Act Cap.
C65, Revised Statutes of Anguilla – Oppression and
unfair prejudice by virtue of delayed Annual General
Meeting – Whether trial judge’s order and Companies Act

prevented appellants from convening Annual General Meeting – Whether Court should grant stay of execution in light of restrictions imposed on the freedom of movement and association amidst COVID-19 pandemic

Type of Order:

Directions

Result:

IT IS HEREBY ORDERED THAT:

- 1. Counsel for the parties shall, by the 29th April 2020, co-operate with each other and provide the Court with proposals for the mechanics for holding of the Annual General Meeting of the company Anguilla Electricity Company Ltd.**
- 2. The Annual General Meeting of the Company Anguilla Electricity Company Ltd. shall take place no later than 26th May 2020.**

Reason:

This was an application for a stay of execution of certain orders made by a trial judge in Anguilla.

In the court below, the Attorney General sought relief against the Anguilla Electricity Co. Ltd. (“ANGLEC”), and members of its Board of Directors, under the Companies Act Cap. C65, Revised Statutes of Anguilla, alleging that the Government of Anguilla’s interest in ANGLEC had been oppressed and unfairly prejudiced, on the basis that ANGLEC had failed to hold an Annual General Meeting and to provide disclosure of certain financial statements to its shareholders in accordance with its by-laws and the Companies Act. The Attorney General obtained an interim injunction which restrained the directors of ANGLEC from continuing, purporting or proceeding to conduct or transact or approve the transaction of any business of ANGLEC. The judge also ordered ANGLEC to make disclosure of its 2017 and 2018 financial statements to the Attorney General.

Following the substantive trial of the Attorney General’s claim, the trial judge declared and ordered, inter alia, that: (i) the tenures of the directors of ANGLEC had expired by operation of section 106(3) of the Companies Act, and consequently the Board of Directors of ANGLEC was vacant; (ii) ANGLEC’s financial statements be provided to the Attorney General and the financial reporting requirements of the company be implemented

forthwith in accordance with section 134 of the Companies Act; (iii) an Annual General Meeting of ANGLEC be convened no later than 7 days from the date of the order; and (iv) the corporate secretary of ANGLEC give notice to the shareholders of the date, time and a place of the meeting, which was to include the election of the directors of the company. The appellants have appealed and sought a stay of that order, pending the determination of the appeal, and pending the determination of the COVID-19 pandemic, in light of which the Government of Anguilla had, by order, severely restricted the freedom of movement and association of the people of Anguilla, and which the appellants claimed have frustrated their ability to hold the Annual General Meeting.

After engaging counsel for the appellants, Mr. Frank Walwyn, the Court firstly formed the view that the critical matter in the proceedings was to have the Annual General Meeting be held in accordance with the requirements of ANGLEC's by-laws and the Companies Act.

Secondly, the Court formed the view that the order of the trial judge granting an injunction by no means had the effect preventing ANGLEC's Annual General Meeting from taking place, as required by law.

Thirdly, the Court took the view that the COVID-19 pandemic did not prevent the parties from convening an Annual General Meeting and facilitating the election of persons to its Board of Directors, given that there are a range of means by which the Annual General Meeting could be convened.

Fourthly, the Court took the view that sections 122 and 268 of the Companies Act permitted it to make orders as to the holding of an Annual General Meeting, notwithstanding the learned judge's order and ANGLEC's by-laws.

The Court therefore, in exercising its powers pursuant to the Companies Act, determined that it was appropriate to fashion a remedy to deal with the issue of when it was appropriate to hold the Annual General Meeting, and that it ought to give directions to facilitate the holding of the

meeting.

Counsel for both the parties indicated their consent to discuss and agree on a proposal for the manner in which the Annual General Meeting ought to be held, and to file their proposal in this regard for the Court's consideration. Counsel further agreed that an Annual General Meeting could be convened before 26th May 2020.