

COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS

12th March 2018 to 16th March 2018

JUDGMENTS

Case Name:

Stephen McBurnie

v

Irma Marryshow

**(in her capacity as administrator of the estate
of Shebah Marryshow, deceased)**

**[GDAHCVAP2016/0021]
(Grenada)**

Date:

Monday, 12th March 2018

Coram:

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

Appearances:

Appellant:

**Mr. Garth Wilkin holding papers for Mr. James
Bristol.**

Respondent:

**Ms. Dia Forrester holding papers for Mr. Ruggles
Ferguson.**

Issues:

**Civil appeal — Interlocutory proceedings —
Application to strike out claim following entry of
default judgment against one of two defendants —
Applicability of principles of merger and election —
Whether on a claim against more than one tortfeasor,
entry of judgment in default against one tortfeasor
amounts to a merger of the cause of action against
the other tortfeasor(s) and/or an unequivocal
election which prevents the claimant from continuing
the action against the other defendant**

**Result and
Reason:**

Held: allowing the appeal; setting aside the order of the learned master; dismissing the respondent's claim and awarding the appellant fifty percent of its costs, such costs to be assessed, if not agreed within twenty-one days, that:

- 1. Where a right of action or a cause of action was determined to exist and judgment was given on it by a court, the right or cause of action becomes merged in or transmuted into the judgment and ceases to exist. Thereafter, the person in whose favour the judgment was pronounced is precluded from recovering a second judgment for the same civil relief or on the basis of the same right or cause of action.**

King v Hoare (1844) 13 M&W 494 applied; Rukhmin Balgobin v South West Regional Health Authority [2012] UKPC 11 applied; Halstead (Donald) v Attorney General of Antigua and Barbuda (1995) 50 WIR 98 applied.

- 2. The learned master erred in finding that an element of the principle of merger is that damages must have been ascertained. If that element were necessary to establish merger, the principle would only be applicable in cases where the remedy is damages. The application of the principle of merger is not so limited as illustrated by the decisions in Halstead (Donald) v Attorney General of Antigua and Barbuda and Rukhmin Balgobin v South West Regional Health Authority. The learned master also erred in finding that the default judgment entered against the Estate was not a final judgment. The Privy Council decision in Strachan v Gleaner Company Ltd. establishes that a default judgment is a final determination of liability once it has not been set aside. Further, in the principle of merger, what is merged with the judgment is the right of action or cause of action which ceases to exist. The quantum of damages obtainable is not part of the cause of action.**

Rukhmin Balgobin v South West Regional

Health Authority [2012] UKPC 11 applied; Halstead (Donald) v Attorney General of Antigua and Barbuda (1995) 50 WIR 98 applied; Stratchan v Gleaner Company Ltd. [2005] UKPC 33 applied.

3. The principle of merger is applicable to the instant case as the respondent had a single cause of action against both the appellant and the Estate, and having entered judgment in default against the Estate, her cause of action merged with the judgment and ceased to exist. Therefore, the respondent is barred from continuing her claim against the appellant.
4. Where the issue of unequivocal election is raised, the court is required to consider firstly whether the case is one to which the doctrine of election is applicable and if applicable, whether the claimant made an unequivocal election. In order to make an unequivocal election, the person making the election must have determined that he would follow one remedy from among two or more remedies, although not necessarily stating that is what was being done; the choice of remedy must be communicated to the other party and the communication must be pellucid so as to make the other party believe that the remedy chosen was preferred over all other remedies. The consequence of making an unequivocal election is that the election would operate as a bar to institution or continuation of proceedings against another party.

Scarf v Jardine (1882) 7 App Cas 345 applied; Rukhmin Balgobin v South West Regional Health Authority [2012] UKPC 11 applied; Morel Brothers & Co. Ltd. v Earl of Westmorland [1904] AC 11 applied; Development Bank of St. Kitts and Nevis v Browne SKBHCV2012/0084 (delivered on 8th April 2014, unreported) considered.

5. The mere entry of judgment in default did not amount to an unequivocal election by the respondent. From the pleadings, the appellant's

defence was that he was not vicariously liable for the actions of Mr. Ronald McBurnie. He did not deny that Mr. Ronald McBurnie's negligence was responsible for the collision which caused the death of Ms. Shebah Marryshow. In light of those factors, the entry of judgment in default was merely a convenient way for the respondent to deal with the aspect of the claim relating to Mr. Ronald McBurnie's negligence, which was not challenged and which was essential in establishing the liability of the appellant. Additionally, the respondent took no steps to enforce the judgment in default, but continued to pursue her claim against the appellant. Considering the circumstances cumulatively, it cannot be said that the respondent by entering judgment in default against the Estate made an unequivocal election to pursue her claim exclusively against the Estate.

Case Name: **The Permanent Secretary of the Ministry of Finance**
v
Financial Investment and Consultancy Services Ltd
[GDAHCVAP2016/0001]
[Grenada]

Date: **Tuesday, 13th March 2018**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: **Mr. Damien Kelsick holding papers for Mr. Anthony Astaphan, SC**
Respondent: **Ms. Jean Dyer holding papers for Mr. James Bristol**

Issues:

Interlocutory appeal — Judicial review proceedings — Preliminary point — Whether order of mandamus lies to compel the appellant to make satisfaction of judgment debt — Statutory interpretation — Implied repeal — Whether section 21 of the Crown Proceedings Act of Grenada impliedly repealed by section 41 of the Public Finance Management Act of Grenada — Applicability of generalia specialibus non derogant maxim — Impact of implied repeal of section 21 of Crown Proceedings Act on separation of powers principle

Result and Reason:

Held: dismissing the appeal against the order of the learned judge and awarding prescribed costs of the appeal to the respondent in the amount of \$5,000.00, that:

- 1. The test of whether there has been a repeal by implication by subsequent legislation is this: are the provisions of the later act so inconsistent with, or repugnant to, the provisions of the earlier act that the two cannot stand together. The test is subject to the exception embodied in the maxim generalia specialibus non derogant.**

Churchwardens and Overseers of West Ham v Fourth City Mutual Building Society [1892] 1 QB 654 applied; Mary Seward v The Owner of the “Vera Cruz” (1884) 10 App Cas 59 applied; Kutner v Phillips [1891] 2 QB 267 applied.

- 2. There are differences between section 41 of the PFMA and section 21 of the CPA. Notwithstanding the differences between the two provisions, they can operate together and can be given effect to at the same time. Section 21 of the CPA created a comprehensive and specialised procedure for a judgment creditor to obtain prompt payment from the Government of his or her judgment debt by obtaining a certificate of the judgment from the Registrar of the High Court and submitting it to the Attorney General. This is**

a special procedure and it has not been derogated from by the general provisions of section 41 which deal with the internal mechanism for payments out of the Consolidated Fund. Section 41 says nothing about a third party judgment creditor having to make a claim on the Minister, nor does it direct any prescript in relation to a third party judgment creditor, unlike the specific provision in section 21 of CPA. The exception to the implied repeal principle embodied in the *generalia specialibus non derogant* maxim is therefore applicable and, as a result, section 21 of the CPA was not impliedly repealed by section 41 of the PFMA and continues to be a part of the law of Grenada.

Section 21 of the Crown Proceedings Act, Cap.74, Revised Laws of Grenada 2010 applied; Section 41 of the Public Finance Management Act, Act No. 27 of 2007, Laws of Grenada applied; *Churchwardens and Overseers of West Ham v Fourth City Mutual Building Society* [1892] 1 QB 654 applied; *Mary Seward v The Owner of the "Vera Cruz"* (1884) 10 App Cas 59 applied; *Kutner v Phillips* [1891] 2 QB 267 applied; *Gairy (Jennifer) v Attorney General of Grenada (No.2)* (1999) 59 WIR 174 followed; *Ray Sylvester v Keith Mitchell and Minister of Finance* GDAHCV2014/0172 (delivered 23rd July 2014, unreported) considered.

3. An implied repeal of section 21 of the CPA could impact the separation of powers principle. This is because a finding that section 21 of the CPA was impliedly repealed by section 41 of the PFMA would have the effect of removing the court's power to order when a money judgment should be paid, and assigning that power to the Executive pursuant to section 41. An implied repeal of section 21 would have the effect of Executive intervention in the time for payment of monies ordered by the courts to be paid by the Government. It is unlikely that Parliament intended to achieve such a drastic result by an implied repeal of section 21 of the CPA.

Gairy (Jennifer) v Attorney General of Grenada (No.2) (1999) 59 WIR 174 followed.

- 4. As section 21 of the CPA was not impliedly repealed by section 41 of the PFMA, the learned judge did not err in dismissing the preliminary point. Therefore, an order of mandamus lies to compel the Permanent Secretary of the Ministry of Finance to make immediate payment of the judgment debt to the respondent.**

Case Name:

South Asia Energy Limited

v

Hycarbex-American Energy Inc

**[SKBHCVAP2017/001]
(Saint Christopher and Nevis)**

Date:

Tuesday, 13th March 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Ms. Dia Forrester with her, Ms. Michelle Jan Slack

Respondent:

Ms. Midge A. Morton

Issues:

Civil appeal – Evidence – Expert witness on questions of foreign law – Parts 31 and 32 of Civil Procedure Rules 2000 (“CPR”) – Expert witness’ undisclosed material conflict of interest – Whether learned judge erred in exercise of her discretion in allowing respondent’s expert witness to be called when he had a conflict of interest which was not disclosed – Whether learned judge erred in disallowing appellant’s expert witness to be called on the basis of non-compliance with CPR Parts 31 and 32

**Result &
Reason:**

Held: allowing the appeal and making the orders set out in paragraph 34 of the judgment, that:

- 1. Where an expert has a material or significant conflict of interest, the court is likely to decline to act on his evidence, or indeed to give permission for his evidence to be adduced. A party wishing to call an expert with a potential conflict of interest (other than of an obviously immaterial kind should disclose details of that conflict at the earliest opportunity. Part 32 of the Civil Procedure Rules 2000 (“CPR”) contains safeguards in respect of the receipt and use by the court of expert evidence.**

Toth v Jarman [2006] EWCA Civ 1028 applied.

- 2. In the case at bar, the evidence put forward by SAE that Mr. Raza had acted as advocate in the arbitration on behalf of Hycarbex’s parent company was not disputed. Nor was it in dispute that Hycarbex was placing great reliance on the 3 final partial award of the ICC Arbitration as a primary basis for resisting SAE’s claim. This raises a serious conflict of interest on the part of Mr. Raza. It was therefore necessary for Hycarbex to expressly and clearly bring to the court’s attention any information which posed or had the potential of posing a conflict of interest in respect of Mr. Raza and it failed to do so. Accordingly, the learned judge committed an error of principle in her consideration of the issue raised and failed to have regard to the relevant matters in exercising her discretion.**
- 3. CPR 32.6 contemplates that where a party intends to call an expert witness, the party must first seek permission and place before the court, the name of the expert and identify the nature of his/her expertise. The court will then assess whether the person put forward satisfies it as to the nature of the expertise being sought, having regard to the parties’ pleaded cases. If so satisfied, the court then fixes a period for the submission of the expert’s report. It is impermissible for a party to put in a witness statement and then seek thereafter to have the witness statement deemed**

an expert report. Therefore, the procedure adopted by Hycarbex, for permission to call its expert witness was flawed having regard to CPR 32.6.

4. CPR 31.2(2) states that a party who intends to adduce evidence on a question of foreign law must first give every other party notice of that intention. The Rules do not provide for the notice to be in any particular form. CPR 31.2(3) states that the notice must be given not less than 42 days before the hearing at which the parties propose to adduce the evidence. In this case, the notices of application filed and served by both sides in circumstances where no trial date had been fixed was sufficient notice for the purposes of CPR 31.2(3). Thus, SAE had complied with CPR 31.2 and there was no basis on which the judge could have dismissed SAE'S application and allowed Hycarbex's when both applications were made in a similar manner.

Case Name:

**[1] Director of Public Prosecutions
[2] Adolphus Delplesche
[3] Fitzbourne Chambers Corporal168
[4] The Attorney General
v**

**[1] Rudolpho Alexander
[SVGHC VAP2015/0016]
[St. Vincent and the Grenadines]**

Date:

Thursday, 15th March 2018

Coram:

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

Appearances:

Appellants: Mr. Valston Graham holding papers for Mr. Joseph Delves

Respondent: Mr. Terence Byron holding papers for Mr. Richard Williams

Issues: Civil appeal – Judicial review – Application for leave to seek judicial review of prosecutorial decision to discontinue proceedings in relation to one charge and institute proceedings on a subsequent charge – Powers of Director of Public Prosecutions – Charge laid under non-existent section in Firearms Act – Nolle prosequi entered by Director of Public Prosecutions after no case submission – New charge preferred – Whether learned judge erred in granting leave to review DPP’s decision to commence proceedings on new charge – Applications to second judge to set aside leave and strike out claim – Whether second judge erred in refusing applications

Result and Reason: Held: allowing the appeal against the decision of the first learned judge granting Mr. Alexander leave to bring judicial review proceedings; allowing the appeal against the decision of the second learned judge refusing to set aside the leave that was granted; setting aside the leave granted and ordering that each party bear their own costs, that:

1. Section 64(2) of the Constitution of Saint Vincent of the Grenadines empowers the Director of Public Prosecutions (the “DPP”) to institute and/or discontinue criminal proceedings at any stage of the matter, including at the close of the prosecution’s case. In fact, it is open to the DPP to enter a nolle prosequi before a conviction is rendered even if the defence has already led its defence. There is nothing unlawful, without more, about the DPP entering a nolle prosequi in a matter and proceeding to prosecute on a new charge. In addition, section 67 of the Criminal Procedure Code empowers the DPP to do so.

Gladys Tappin v Francis Lucas (1973) 20 WIR 229 applied.

- 2. The Court will refuse leave to institute judicial review unless it is satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy. It is settled law that the exercise of the DPP's discretion is judicially reviewable. However, this review power should be used in exceptional circumstances. In the case at bar, the matters that are complained of fall squarely within the proper exercise of the DPP's constitutional power. Had the proper sifting of the matters been undertaken by the first learned judge, it would have been evident that leave to bring judicial review proceedings ought not to have been granted since the complaints cumulatively and individually were insufficient to establish arguable grounds nor did they have any realistic prospect of success. Therefore, the learned judge ought not to have granted Mr. Alexander leave to institute judicial review proceedings. In so doing, the judge, in the exercise of her discretion, committed an error of principle.**

Sharma v Browne Antoine and Others (2006) 69 WIR 379 applied.

- 3. In the set aside application, the second judge concluded that there was no basis to find that the order granting leave was wrongly made. Bearing in mind that judicial review is an exceptional remedy or a remedy of last resort, any issue relating to the decision to prosecute should ordinarily be raised in the criminal proceedings. The second judge failed to have regard to the fact that all of Mr. Alexander's complaints could have been resolved within the criminal trial process and in so doing, the second judge erred in the exercise of her discretion and committed an error of principle. The second judge did not subject the material before her to the appropriate scrutiny and also failed to adhere and properly apply the**

relevant principles. Thus, her decision not to set aside the leave can be assailed since it falls outside of the generous ambit within which reasonable disagreement is possible.

Swingler v R [1996] 1 VR 257 applied; Sharma v Browne Antoine and Others (2006) 69 WIR 379 applied.

4. In exercising this Court's discretion afresh, and considering the circumstances of the alleged offence, the conduct of the DPP and the countervailing circumstances of Mr. Alexander together with the relevant legal principles and statutory provisions, the only conclusion that can be properly reached is that the present case was totally unsuitable for judicial review proceedings. The complaints made, at their highest, would amount to mere technical errors that were put right by the institution of the new charge. This Court possesses inherent jurisdiction to prevent the misuse of its procedure in any way which would be manifestly unfair to a party to the litigation, or would in any way bring the administration of justice into disrepute. However, this is not such a case and judicial review of the DPP's decision should not be permitted.

Hunter v Chief Constable of West Midlands and others (1982) AC 529 applied; Matalulu and Another v DPP [2003] 4 LRC 712 applied; R v Director of Public Prosecutions, Ex parte Kebilene and Others [2000] 2 AC 326 applied

STATUS HEARING

Case Name:

Alistair Isaac

V

The Director of Public of Public Prosecutions

[SKBHCRAP2012/0023]

Date: Monday, 12th March 2018

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

Appearances:

Appellant: In person

Respondent: Mr. Vaughn Henderson

Issue: Status of the matter

Type of Oral Result / Order Delivered: Adjournment

Result / Order: [Oral Delivery]
1. The matter is adjourned to Friday, 16th March 2018 at 8:45 a.m.

Reason: The matter is adjourned to determine whether the appellant was charged with armed robbery as well as wounding with intent.

Case Name:

**Junior McFarlane
v
Desdemona Henry**

[SKBMCVAP2015/0005]

Date: Monday, 12th March 2018

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

Appearances:

Appellant: Ms. Natasha Grey

Respondent: No appearance

Issue: Status of the matter

**Type of Oral
Result / Order
Delivered:** Directions

Result / Order: [Oral Delivery]
The matter is adjourned to the next sitting of the court of appeal commencing in the week of 25th June 2018 in the Federation of Saint Christopher and Nevis for a final adjournment.

Reason: Counsel for the appellant indicated that she requires more time to obtain further instructions from the appellant due to the respondent being deceased.

APPLICATIONS AND APPEALS

Case Name: South East Asia Energy Holding A.G.
v
Hycarbex-American Energy Inc.

[SKBHCVAP2016/0015]

Date: Monday, 12th March 2018

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

Appearances:

Applicant: Ms. Dia Forester

Respondent: Ms. Midge Morton with her, Ms. Maurisha Robinson.

Issues:

Application for leave to appeal to Her Majesty in Council – Whether the application should be pursued pursuant to section 99(1) versus section 99(2) of the Constitution of Saint Christopher and Nevis –

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]
Conditional leave to appeal may be granted pursuant to section 99(2) of the Constitution of Saint Christopher and Nevis.

Reason:

The Court does not consider the test as of a right has been met under section 99(1) of the Constitution.

Under section 99(2) the Court is of the opinion that because of great public importance where the issues engage the application of section 4 of the Arbitration Act of the United Kingdom conditional leave may be granted. The Court in arriving at its decision also considered the decision in *Martinus Francois v the Attorney General SLUHCVP2003/0037 (delivered 7th June 2004* where the issue engages the application of section 4 of the Arbitration Act of the United Kingdom where assertion of fraud and collusion were made on behalf of the appellant.

The Court considers that this is an appropriate case to refer this matter to Her Majesty and so order conditional leave and in the usual terms and conditions.

Case Name:

**Ramsbury Properties Ltd
v
Ocean View Construction Ltd**

[SKBHCVAP2011/0020]

Date:

Monday, 12th March 2018

Coram:

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

Appearances:

Applicant:

Ms. Angela Cozier with her, Ms. Emily Prentice

Respondent:

No Appearance

Issues:

Leave to adduce fresh evidence – Application for stay of execution – Whether appellant satisfied the requirements for the admittance of fresh evidence

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The application to adduce fresh evidence by the applicant/appellant filed on 8th January 2018 is dismissed.**
- 2. The stay sought is also refused.**

Reason:

The Court can see no basis why it ought to grant a stay in these proceedings

The Court does not consider it will be in the overriding objectives to allow the lease agreement to be adduced as fresh evidence having regard to the fact that this could have with reasonable diligence been put before the learned trial judge. This

evidence is borne by the evidence adduced and led by the applicant that arrangements were made, whether those arrangements were oral or in writing.

Russel Holdings Limited v L&W Enterprises Inc. and Global Limited [2016] JMCA Civ 39 applied, in which the Court ought to view the issues based on the overriding objectives and not on the principles of *Ladd v Marshall (1954) EWCA Civ 1*. However, on careful reading of *Russel* this case does not seek to suggest any difference to the decision of *Ladd*.

The Court is of the view that the applicants were aware of the agreement. Due to the state of affairs in reference to the parties' knowledge about the agreement it was a live issue between the parties. The applicant could have gotten information about the lease that was available at the time of the trial. The Court is of the view that the *Russel* principles are not different to those in *Ladd* and applied in *The Honourable Guy Joseph v The Constituency Boundaries Commission et al SLUHCVP2015/0013 (delivered 1st October 2015, unreported)*. There is no relaxation of the rules.

This was a full trial on the merits. The applicant had the opportunity to make an application for information and the applicant failed to do so. It would therefore be contrary to the overriding objectives to allow the applicant to adduce fresh evidence and so the appeal is dismissed.

Case Name:

Karin Colt

v

Gary Colt

[SKBHCVAP2017/0024]

Date:

Monday, 12th March 2018

Coram:

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

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

Appearances:

Applicant: Mrs. Sherry Ann Liburd-Charles with her, Ms. Liska Hutchinson

Respondent: Ms. Michelle Slack

Issues:

Application for stay of execution – Whether order should be stayed pending determination of the appeal

**Type of Oral
Result / Order
Delivered:**

N/A

Result / Order:

Matter stood down until 2:00 p.m.

Reason:

Matter stood down to allow the parties to come to an agreement.

Case Name:

**Karin Colt
v
Gary Colt**

[SKBHCVAP2017/0024]

Date:

Monday, 12th March 2018

Coram:

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

Appearances:

Applicant: Mrs. Sherry Ann Liburd-Charles with her, Ms. Liska Hutchinson

Respondent: Ms. Michelle Slack

Issues: Application for stay of execution – Whether order should be stayed pending determination of the appeal

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The minor child Maeva Melody Colt shall remain in the primary care of the mother.
2. The father shall subject to paragraph 3 be granted access to the child from 3:30 p.m. by collecting the child from school and returning the child to the mother at 6:30 p.m.
3. The father shall have access every other Friday and the child is to be returned to the mother at 6:30 p.m. on Sundays.
4. The vacation periods shall be spent equally between the mother and the father and the child shall be returned at 6:30 p.m. at any time when this vacation starts.
This order becomes effective on Thursday 15th March 2018.

Reason: The order will allow the minor child to spend time with both parents without any feelings of anxieties brought on by any prior disputes.

Case Name: [1] Bessage Ltd.
v
[1] St. Michael's Foundation Ltd.
[2] St. Kitts and Nevis Anguilla National Bank
[SKBHCVAP2017/0014]

Date: Monday, 12th March 2018

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

Appearances:

Applicant: Dr. Henry Browne, QC with him, Mr. O’Grenville Browne

Respondents: Ms. Dia Forester for the 1st respondent
Mr. David Rawlins for the 2nd respondent

Issues: Application for leave to appeal – Application for stay of execution

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]

1. The application for permission to appeal from the learned master made on 9th August 2017 is hereby dismissed and in any event the Court has on record a notice of discontinuance filed on 21st February 2018 by counsel last appearing for the applicant company, St. Michael’s Foundation Ltd. and counsel, Ms. Lenora Walwyn having filed a notice of discontinuance the Court considers that the applicant has no future interest in the appeal.
2. The stay is also dismissed.
3. The respondent shall have its cost of the application for stay fixed by the Court in the sum of \$750.00 to be paid in twenty-one days.

Reason: There being a notice of discontinuance filed on 21st February 2018, the Court is of the view that the applicant is no longer interested in the appeal.

Case Name:

Keithley Bergan

V

Sheryl Evans

[SKBHCVAP2014/0021]

Date:

Monday, 12th March 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Applicant:

Mr. Damien Kelsick

Respondent:

Mr. Sylvester Anthony, SC

Issues:

Application for leave to appeal to the Majesty in Council

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

Final leave to appeal to Her Majesty in Council is granted.

Reason:

The Court is satisfied that the applicant has met the threshold for leave to appeal to Her Majesty in Council.

Case Name:

Donley Saunders

V

The Director of Public Prosecutions

[SKBHCRAP2012/0007]

Date: Tuesday, 13th March 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Terence Byron holding papers for Mr. Henry Browne, QC

Respondent: Mr. Valston Graham, Director of Public Prosecutions

Issues: High Court criminal appeals against conviction –
Fraudulent Conversion – Application for final adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. The parties are to get together to file a supplemental record of appeal which contains missing exhibits on or before 27th March 2018.
2. The appellant is directed to file and serve succinct grounds of appeal on or before 9th April 2018.
3. The appellant to file and serve skeleton arguments together with authorities on or before 4th May 2018.
4. The respondent shall file and serve skeleton submissions together with authorities on or before 1st June 2018.
5. Hearing of this appeal is adjourned and traversed to the next sitting in Saint Christopher and Nevis which commences on 25th June 2018.
6. This is the final adjournment.

Reason: The adjournment application made by Mr. Terence Byron is granted due to the illness of Dr. Henry

Browne, QC, who is to lead the appeal. There is no objection on behalf of the respondent.

Case Name:

**[1] Kyam Veira
[2] Joel Phillip
[3] Keithroy Phillip**

v

**[1] The Attorney General of Saint Christopher
and Nevis
[2] Director of Public Prosecutions**

[SKBHCVAP2017/0004]

Date:

Tuesday, 13th March 2018

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicants:

**Mr. John Cato holding papers for Dr. Henry Browne,
QC**

Respondents:

**Ms. Nisharma Rattan Mack with her, Ms. Eshe
Hendrickson**

Issues:

**High Court civil appeals – Interlocutory Appeal –
Application for adjournment**

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral Delivery]

1. The application for an adjournment moved by Mr. John Cato on behalf of Dr. Henry Browne QC (for reasons of ill health) Counsel for the first appellant is granted, there being no objections from the respondent.

Hearing of the appeal is adjourned to the next sitting of the Court of Appeal during the week commencing 25th June 2018.

Reason:

The adjournment is granted based on the application of Mr. John Cato for an adjournment as a consequence of Dr. Henry Browne, QC's ill health, who is to lead this appeal, and there being no objection on behalf of the respondent.

Case Name:

[1] Adam Bilzerian

v

[1] Gerald Lou Weiner

[2] Kathleen Weiner

[SKBHCVAP2016/0019]

CONSOLIDATED WITH

Adam Bilzerian

v

Gerald Lou Weiner

[SKBHCVAP2016/0021]

Date:

Tuesday, 13th March 2018

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicant:

Adam Bilzerian acting for Paul Bilzerian, by virtue of a Power of Attorney

Respondent:

Ms. Jean Dyer

Issues:

High Court Civil Appeal – Interlocutory Appeal –

Application for leave to appeal the denial of an adjournment

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

The applications are dismissed with costs to the respondent in the sum of Two Thousand Dollars to be paid within 30 days.

Reason:

The Eastern Caribbean Supreme Court guards court dates jealously. A party must apply for an adjournment and provide evidence to support its application. In order for the Court to set aside the decision of the learned trial judge, the Court must be satisfied that the learned trial judge was wrong when he refused to grant the adjournment.

There were two applications before the Court for an adjournment. One was heard on paper, the background to which is that in June 2016 the learned trial judge set a trial window for November 2016. In October 2016 the court office sent out a notice for a hearing for December 2016. By this time, Adam Bilzerian had made arrangements for serious medical attention in the United States bearing over Twenty Thousand Dollars in costs.

The learned trial judge heard this application on paper. The learned trial judge also considered evidence from Mr. Weiner.

It is the practice that the learned trial judge must give reasons for his decision, however, if this is not done but the reasons can be sufficed from the document this will deemed adequate. In this case no reason was given by the learned trial judge. This Court has examined the record and is of the opinion that the reasons can be found in the affidavits and other supporting documents. Firstly, the statement by Adam Bilzerian was nothing more than a bare statement from him. There was no exhibit to support this fact.

There is the issue of Paul Bilzerian's role in the trial. He is not a party to the proceedings, he is not a lawyer nor a witness in the case. His role is to advise the lawyer who is to advocate the matter. This was not before the learned trial judge when he heard the application.

There is no evidence of why Adam Bilzerian was not present for the trial.

In the circumstances, the Court is of the view that it was open to the learned trial judge to consider the application on paper and can find no error in his decision.

His decision was not outside the generous ambit within which reasonable disagreement is possible and that decision was fair.

The overriding objectives works in two ways for the person applying and also for the person opposing the adjournment. In the circumstances the Court can see no reason to disturb the judge's decision.

With regard to the second application, subsequent to the first application, Mr. Bilzerian filed this appeal based on the refusal of the first application for adjournment. The learned trial judge set out the reasons he took into consideration to refuse the application which was highlighted by the respondent's counsel.

In the absence of any stay, the Court is bound by its decision and the applicant cannot call witnesses.

The Court is satisfied that the learned trial judge in his order dated 6th December 2016 had enough reason to dismiss the application for an adjournment.

Case Name:

[1] The Hon. Vance Amory
[2] The Hon. Troy Liburd

[3] The Hon. Mark Brantley
V
Tamarind Cove Marina Development Limited

[SKBHCVAP2017/0019]

Date: Tuesday, 13th March 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Jean Dyer with her Ms. Rhonda Nisbett Browne

Respondent: Ms. Barbara Hartman with her, Mr. Sylvester Garrot
and Mr. John Cato

Issues: High Court civil appeals – Interlocutory appeals –
Application for leave to appeal – Whether learned
judge erred in refusing to strike out claim against the
Ministers as parties in the proceedings

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is allowed. The three ministers’ names
are struck from the claim having being sued in their
official capacity. Each party shall bear its own costs.

Reason: This is an appeal against the decision of the learned
trial judge in which the learned judge refused to
strike out a case against the three appellants in their
official capacities. Instead of striking out the
ministers’ names, the learned trial judge granted
leave to particularize the causes of action against the
ministers.

The Court has read the helpful submissions of both
counsel for the appellants as well as counsel for the

respondent. In the circumstances, the Court is of the view that there is common ground that the claim is one for misfeasance in public office, which is a tort. Applying the principles in *Florencio Marin et al v The AG of Belize CCJ Appeal No. CV5 of 2000*. The Court is of the view that the claimant had two options available in so far as the claimant had the choice to sue for misfeasance in a vicarious liability suit.

It was not open to the claimant to sue the appellants in their official capacity. The Court is of the view that having regard to *Marin* and *The AG v Allen Chastanet et al* SLUHCVP2015/0016 (*delivered 4th July 2016, unreported*), the learned trial judge ought to have exercised her discretion to strike the ministers name and in failing to do so the learned trial judge exercised her discretion improperly and was plainly wrong in doing so.

1. Applying the principles, in *Michel Dufour and others and Helenair Corporation Ltd. [1996] 52 WIR 188* the Court is of the unanimous view that the ministers cannot be sued in their official capacity based on the cause of action pleaded by Tamarind Cove Development Ltd. In the circumstances, the appeal in refusing to strike out the ministers as parties should be allowed.

Case Name:

Sylvester Merchant
V
The Director of Public Prosecutions
[SKBHCRAP2013/0014]

Date:

Wednesday, 14th March, 2018

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Applicant: Mr. O’Grenville Browne holding papers for Dr. Henry Browne, QC

Respondent: Mr. Tessaun Vasquez

Issues: High Court criminal appeals against conviction – Application for adjournment

Type of Oral Result / Order Delivered: Adjournment

Result / Order: [Oral delivery]
Application granted for adjournment.

Reason: Application granted for reasons of ill health of Dr. Henry Browne, QC

Case Name: Jahmari Lake
v
The Director of Public Prosecutions
[SKBHCRAP2013/0006]

Date: Wednesday, 14th March, 2018

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

Appearances:

Applicant: Mr. John Cato

Respondent: Ms. Greatess Gordon

Issues: High Court criminal appeals against conviction – Application for adjournment

Type of Oral Directions

**Result / Order
Delivered:**

Result / Order:

This Court grants one final adjournment on the application of counsel for the appellant. The hearing of this appeal is accordingly adjourned to the next sitting of the court in the Federation during the week commencing 25th June 2018.

Reason:

The Court is satisfied with the explanation provided for the request of adjournment.

Case Name:

[1] Kimberly Ward

[2] Joel Daniel

[3] Kashif Daniel

v

[1] Chief of Police

**[2] The Attorney General of Saint Christopher
and Nevis**

[SKBHCVAP2014/0004]

Date:

Thursday, 15th March 2018

Coram:

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

Appearances:

Applicants:

Mr. Terence Byron

Respondents:

Mrs. Tashna Powell Williams

Issues:

**High Court civil appeals – Application for
adjournment**

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral delivery]

- 1. The record of appeal to be filed and served no later than 6th April 2018.**
- 2. The appellant shall file and serve skeleton arguments with bundles of authorities relied on no later than Friday 20th April 2018.**
- 3. The respondents shall file and serve skeleton arguments in reply no later than Friday, 25th May 2018.**
- 4. Any reply by the appellant shall be filed and served no later than 8th June, 2018.**
- 5. The hearing of this appeal shall take place during the sitting of the Court commencing the week of 25th June 2018.**

Case Name:

[1] Anthony Glasford

[2] Jacqueline Jeffers

v

[1] Jeffer Douglas

[SKBHCVAP2012/0014]

Date:

Thursday, 15th March 2018

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicants:

Ms. Deidre Williams holding papers for Mr. Jeffery Nisbett

Respondent:

Ms. Emily Prentice for the respondent, Mr. Jeffer Douglas and counter appellant in the counter appeal.

Issues:

High Court civil appeals – application for adjournment

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral Delivery]

1. No record of appeal has been filed notwithstanding that the transcript of the proceedings in the court below was furnished by the court office to the parties. The Court cannot proceed to hear the appeal in the absence of the record, given the matters raised in the grounds of appeal on both sides. Accordingly, the appellant must comply with 62.12 of the CPR.
2. The appeal shall be removed from the hearing list until such time as the record of appeal is filed and served in accordance with the rules.

Case Name:

**Ellia Jeffers
v
The Chief of Police**

[SKBMCRAP2015/0015]

Date:

Thursday, 15th March 2018

Coram:

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

Appearances:

Appellant:

Ms. Natasha Grey

Respondent:

Ms. Greatess Gordon

Issues:

**Magisterial criminal appeals against conviction –
Whether the learned magistrate took into account
irrelevant factors in coming to her decision –
Whether the decision of the learned magistrate is**

unreasonable or cannot be supported having regard to the evidence – Whether the decision of the learned magistrate was erroneous in point of law.

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

1. Appeal against conviction is dismissed and conviction affirmed.
2. Appeal against sentence is varied to the extent that the appellant is ordered to pay \$65,000.00 no later than 11th May 2018, in default 12 months.

Reason:

The appeal is dismissed as there is no merit in the grounds raised. The circumstantial evidence in this case was more than sufficient on which the learned magistrate could and did find the appellant guilty of the charges brought by the prosecution.

Accordingly, the conviction is affirmed. In reference to the sentence, although the court considers the fine of \$65,000.00 lenient, it does not consider that it is unduly so as to warrant interference with it. Save that the magistrate ought to have carried out an enquiry as to the appellant's means to pay before ordering the fine to be paid forthwith.

Accordingly, the Court varies the terms of the sentence.

Case Name:

[1] Robert Richards

[2] David Sharp

v

Mervin Powell

(doing business as Mervin's Car Rentals)

[SKBMCVAP2016/0009]

Date:

Thursday, 15th March 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants:	Mr. Adrian Daniel
Respondent:	Ms. Emily Prentice

Issues: Magisterial civil appeal – Whether the doctrine of separate legal entity is applicable – Whether the learned magistrate erred in law in allowing the appellant to be tried as a proper party and further holding that the appellant was liable in his personal capacity for any act or transaction conducted on behalf of the appellant’s company, Arista Wood Design Ltd.

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
1. Appeal dismissed.
2. Costs to the respondent to be paid by the appellant in 2/3 of the sum awarded below, that is \$1,200.00 to be paid by 30th April, 2018.

Reason: 1. There was ample evidence for the learned magistrate to come to her decision. Mr. Richards was in breach of the agreement and Mr. Powell was entitled to look to him for damages when the vehicle was damaged.

Case Name: Razba Matthew
v
The Director of Public Prosecutions

[SKBHCRAP2011/0021]

Date: Friday, 16th March 2018

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

Appearances:

Appellant: Ms. Marsha Henderson with her Mr. Vaughn Woodley

Respondent: Mr. Valstan Graham, Director of Public Prosecutions with him, Ms. Greatess Gordon

Issues: High Court criminal appeal against conviction – Manslaughter – Application to amend grounds of appeal to include additional grounds – Whether the learned trial judge failed to properly direct the jury based on the principle of circumstantial evidence– Whether the learned trial judge failed to put the appellant’s defence to the jury

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed on both grounds and conviction of manslaughter is affirmed.

Reason: The Court can find no basis to interfere with or to criticize the directions given by the learned trial judge on the issue of circumstantial evidence. The law clearly indicates that there is no settled or single direction which ought to be given once it is brought home to the jury clearly that the matter is one that is based on circumstantial evidence and critically that it is for the Crown to prove the guilt of the accused beyond a reasonable doubt.

The Court applied the principles that were enunciated in *McGreevy v DPP* [1973] 1 WLR 276 which indicates that it would be undesirable to lay

down as a rule which would bind judges that a direction to a jury in circumstances where circumstantial evidence is the basis of the prosecution's case must be given in some special form provided always that it is made clear to the jury that they must not convict unless they are satisfied beyond all reasonable doubt.

Where the prosecution's case rests on circumstantial evidence, no duty rests on the judge in addition to directing the jury that they can only convict if the prosecution has proven its case beyond a reasonable doubt. To say that they must not convict on circumstantial evidence, that the facts proven are consistent with the guilt of the appellant and exclude every possible explanation other than the guilt of the appellant, provided that the learned judge indicated to the jury that there are no eye witnesses and brings home to the jury that the case is based on circumstantial evidence, and that the Crown has a duty to prove the case beyond a reasonable doubt will suffice.

Case Name:	Samuel Tyson v The Director of Public Prosecutions [SKBHCVAP2011/0012]
Date:	Friday, 16 th March 2018
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Mr. Jason Hamilton
Respondent:	Ms. Greatess Gordon with her, Mr. Teshaun Vasquez
Issues:	High Court criminal appeals against conviction –

Indecent assault – Whether the judge erred in the conviction and sentence in the circumstances – Whether the learned magistrate took into account irrelevant considerations in coming to her decision – Whether the decision of the learned magistrate is unreasonable or cannot be supported having regard to the evidence – Whether the decision of the learned magistrate was erroneous on the point of law.

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The appeal against conviction is dismissed and the conviction is affirmed.
2. The appeal against sentence is varied to the extent that the sentence of 10 years is substituted for 8 years imprisonment.

Reason:

The appeal against conviction having been properly withdrawn by Counsel stands dismissed.

The court is of the opinion that the learned trial judge erred in circumstances where he used the maximum sentence of 10 years as the notional sentence.

The Court is of the opinion that the appropriate notional sentence ought properly to have been 5 years in prison taking into account the mitigating factors and the aggravating factors in this case, the Court is of the view that the sentence that ought to have been imposed is a sentence of 4 calendar years, 2 months and 15 days.

Time served to be taken into account .Accordingly, a sentence of 8 years imprisonment is substituted for the sentence of 10 years.

Case Name:

First Fidelity Deposit Corporation

v

**[1] Andrew Michael Austin Titley
[2] Judith Ann Bruton Titley
[3] Caribbean Trust Company**

[SKBHCVAP2015/0031]

Date: Friday, 16th March 2018

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

Appearances:
Appellant: No Appearance

Respondents: No appearance

Issues: High Court civil appeals – Whether no appearance for or on behalf of the appellant amount to a dismissal of the matter

Type of Oral Result/Order Delivered: Oral Judgment or Decision

Result / Order: The matter is struck off of the list for want of prosecution.

Reason: There being no appearance of and on behalf of the appellant and the Court having noted that at the case management hearing there was no appearance of the appellant the matter is struck off.

Case Name: **[1] Kauesi Hanley
[2] Shakespeare Southwell
v
[1] The Chief of Police**

[SKBMCRAP2015/0008A]

Date: Friday, 16th March 2018

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

Appearances:

Appellants: Mr. O’Grenville Browne with him, Mrs. Marissa Hobson-Newman holding papers for Dr. Henry Browne, QC for the 2nd appellant
1st respondent in person

Respondent: Ms. Greatess Gordon with her, Mr. Vaughn Henderson

Issues: Magisterial Criminal appeal against conviction – Possession of a controlled drug and possession with intent to supply – Application for adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. is hereby ordered that the hearing of this appeal is adjourned and traversed to the next sitting of the Court during the week which commences on 25th June 2018.
2. This is the final adjournment.

Reason: Based on the illness of Dr. Henry Browne, QC who has submitted a medical certificate to that effect and is lead counsel on behalf of the 2nd appellant, and there being no objections by the Crown.

Case Name: Alistair Isaac
v
The Director of Public Prosecutions
[SKBHCRA2012/0023]

Date:	Friday, 16th March 2018
Coram:	The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Mr. Vaughn Henderson
Issues:	High Court criminal appeal – Whether the appellant was properly convicted on a charge of wounding with intent as well as armed robbery
Type of Oral Result / Order Delivered: (if applicable):	Oral Judgment or Decision
Result / Order:	[Oral delivery] The appeal against conviction is allowed and the sentence of 12 years for armed robbery and 12 years for wounding with intent are quashed.
Reason:	The order is made based on the fact that the transcript was not available and the Court had made an order in December 2017 that if the transcript was not available the appeal would be allowed.