

COURT OF APPEAL SITTING

ANTIGUA & BARBUDA

Monday, 27th February 2017 to Friday, 3rd March 2017

JUDGMENT

Case Name: **National Commercial Bank of Anguilla Ltd.**
v
National Bank of Anguilla (Private Bank and Trust)
Limited (In Administration)

[AXAHCVAP2016/0009]

Date: **Tuesday, 28th February 2017**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Clare Henry, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. William Hare with him, Mr. Alex Richardson
Respondent:	Ms. Lisa John-Weste holding papers for Mr. Patrick Patterson and with him, Ms. Eustella Fontaine

Issues: **Interlocutory appeal – Proprietary claim – Appellant and respondent banks incorporated in Anguilla – Disputed funds in appellant’s bank account at Bank of America – Funds in account claimed by respondent – Application for mandatory injunction by appellant for respondent to withdraw request for freezing of accounts – Conditions for grant of mandatory injunction – Whether there exists serious issues to be tried regarding respondent’s claim to disputed funds – Balance of convenience – Whether trial judge erred in refusing application for mandatory injunction – Appellate court’s function in reviewing exercise of judge’s discretion to refuse injunction**

Type of Oral **Oral Judgment or Decision**

**Result/Order
delivered:**

Reason:

The appellant and the respondent are respectfully a commercial bank and a private bank operating in Anguilla. The appellant operates an account at the Bank of America in New York by which it conducts correspondent banking arrangements with its customers. Customers wishing to carry out overseas transactions deposit the required funds into the Bank of America account that is then used by the appellant to process the transactions. The respondent was put into insolvent administration in Anguilla on the application of the Financial Services Commission, and Mr. William Tacon was appointed administrator. On 6th May 2016, the respondent filed a claim in Anguilla seeking a declaration that such parts of the appellant's funds that constitute funds claimed by the respondent are held on trust for the respondent and for an account of all such funds to establish how much thereof belongs to the respondent. On 5th July 2016, Mr. Tacon's US lawyers wrote to Bank of America asserting the respondent's claim to ownership or at minimum an equitable interest in the funds in the Bank of America account and demanding that the bank freeze the account pending further instructions from the respondent or from a court order. As a result, the appellant has not been able to operate the account and has had to make alternative arrangements to service its clients' transactions at an additional expense, inconvenience and possible loss of reputation. The appellant applied to the High Court in Anguilla for a mandatory injunction ordering the respondent to write to Bank of America instructing them to release the freeze on the Bank of America account. The learned judge found that there were serious issues to be tried but the balance of convenience did not favour the granting of the injunction. The learned judge found that even if the appellant had suffered losses that were not necessarily trivial such losses has not been established to the required standard and in any event could be compensated by an award of damages. Further, that there was no palpable evidence that the respondent would not suffer irreparable harm by the grant of the injunction. The judge refused the injunction and ordered that each party bear its own cost. The appellant appealed against the judge's refusal of the injunction and the costs order.

Held: allowing the appeal, dismissing counter notice of

appeal; granting the mandatory injunction and ordering the respondent to pay the costs of the appellant here and in the court below that:

1. The principles for granting a mandatory injunction are the same as for a prohibitory injunction. What is important is the court's view of whether irreparable harm will be done to one party or the other depending on whether the injunction is granted or refused.
2. An applicant for an interim injunction must establish that there are serious issues to be tried and that the balance of convenience favours the grant of the injunction. In considering the balance of convenience, the court will take into consideration whether the applicant can be compensated by an award of damages if he suffers any damage or harm as a result of the conduct of the respondent to the application.
3. The function of the appellate court as reviewing court is to uphold the exercise of the judge's decision unless it was based on a misunderstanding or misapprehension of the law or of the evidence; or whether there is new evidence or a material change in circumstances since the hearing before the judge; or the decision of the judge is so aberrant that no reasonable judge mindful of his duty to act judicially would have reached it. In the case at bar, the learned judge having found that the appellant had suffered damage that is "not necessarily trivial" albeit un-particularised, should have gone on to deal with the respondent's insolvency or potential insolvency. There is no indication that the judge considered that the appellant could suffer irreparable harm by the respondent's inability to pay an award of damages. The judge did not take into account or give sufficient weight to the impact of the respondent's insolvency on its ability to compensate the appellant for any losses that it has suffered or continues to suffer. This is a material irregularity and in principle this Court can set aside the exercise of the judge's decision and exercise its own discretion.
4. The Court in exercise of its discretion makes its own finding that the balance of convenience favours the grant of the mandatory injunction. In considering an

application for an interim injunction the court should seek to avoid irremediable damage and harm to either party. Therefore the learned judge erred in failing to consider the respondent's insolvency in that the appellant will suffer irremediable harm if an award of damages is made that cannot be recovered from the respondent. That is the decision of the Court.

STATUS HEARING

Case Name:

Claudy Kelvin Brown

v

[1] The Attorney General

[2] The Chief Immigration Officer

[3] The Chief Magistrate

[ANUHCVP2012/0017]

Date:

Tuesday, 28th February 2017

Before:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett

Respondent: Mrs. Carla Brookes-Harris

Issue:

Status of the matter

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

Directions

Result / Order:

[Oral delivery]

- 1. The parties shall seek to agree the statement of facts by 24th March 2017.**
- 2. The appellant is to file and serve statement of facts by 24th March 2017.**
- 3. The appellant is to file and serve written submissions**

by Friday, 21st April 2017.

4. The respondent shall file and serve written submissions in reply by 19th May 2017.
5. The appeal of the matter is to be set down before the Court of Appeal sitting in Antigua and Barbuda during the week commencing 29th May 2017.

Case Name: **Sundry Workers (Represented by the Antigua
Trades & Labour Union)
v
State Insurance Corporation
[ANULTAP2013/0002]**

Date: **Tuesday, 28th February 2017**

Before: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**

Appearances:

Appellant: **Mr. Cosbert Cumberbatch**

Respondent: **Mrs. Cherissa Roberts with her, Ms. Kari-Ann Reynolds**

Issue: **Status of the matter**

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

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

1. The appellant by leave of the Court shall not pursue grounds 1, 2, and 3 of the grounds of appeal contained in the Notice of Appeal filed on 19th March 2014.
2. The request to strike out the appeal is not granted.
3. Unless the appellant files and serves the appeal by Wednesday, 8th March 2017, the appeal herein shall be dismissed.

4. The application by the appellant filed on 21st February 2017 for extension of time to file skeleton arguments is granted and the skeleton arguments are deemed to be duly filed.
5. The appellant shall supplement its skeleton arguments by 8th March 2017.
6. The respondent is to file and serve skeleton arguments by 10th April 2017.
7. The costs of the application to strike out and the application for extension of time shall be borne by the appellant, agreed in the sum of \$1000.00 to be paid by 24th March 2017.
8. The appeal shall be fixed for hearing at the next sitting of the Court of Appeal in Antigua and Barbuda commencing in the week commencing 29th May 2017.

Reason:

Upon hearing the application to strike out the appeal filed on 16th February 2017, the Court was of the view that the grounds of appeal allege issues of law or mixed facts and law and the appeal cannot be said to be utterly hopeless. The Court also had regard to the delay by the appellant in prosecuting this appeal, in particular the failure to file the record of appeal.

Case Name:

Haynes Browne

v

Lena Carr by Her next friend Buell Carr

[ANUHCVP2013/0002]

Date:

Tuesday, 28th February 2017

Before:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: No appearance

Respondent: Ms. Debra C. Burnette

Issue: **Status of the matter**

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

Result/Order: **Appeal ready and set down to be heard by the Full Court on Thursday, 2nd March 2017.**

Case Name: **[1] The Attorney General of Antigua and Barbuda**
[2] Mr. Juno Samuel
[3] Mr. Nathaniel James
[4] Mr. Jack Kelsick
[5] Mr. Anthonyson King
[6] Mrs. Glendina McKay
[7] Ms. E. Ann Henry
[8] Ms. Paula Lee

v
The Hon. Lester Bryant Bird
Leader of the Opposition

[ANUHCVP2013/0027]

Date: **Tuesday, 28th February 2017**

Before: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**

Appearances:

Appellants: **Mrs. Carla Brookes-Harris**

Respondent: **Mr. Hugh Marshall, Jr.**

Issue: **Status of the matter**

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

Delivered:

Result / Order: [Oral delivery]
The matter is discontinued.

Reason: A notice of discontinuance was filed.

Case Name: The Attorney General of Antigua and Barbuda
v
[1] Southern Developers Limited
[2] The Hon. Lester Bryant Bird
[3] Robin Yearwood
[4] Hugh Marshall, Snr.
[ANUHCVP2013/0019]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: Mrs. Carla Brookes-Harris
Respondents: Ms. Rika Bird for the first respondent
Mr. Hugh Marshall Jr. with him, Ms. Kema Benjamin for the second, third and fourth respondents

Issue: Status of the matter

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

Result/Order: [Oral delivery]
On the notice of discontinuance filed on the 21st February 2017 against all the respondents, costs on the

discontinuance to be paid by the appellant in a sum to be assessed unless agreed within 14 days.

Reason: A notice of discontinuance was filed.

Case Name: Geary Andrew Joseph
v
Zephepha R.M. Joseph
[ANUHCVP2013/0008]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:
Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett
Respondent: No appearance

Issue: Status of the matter

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

**Result/Order
& Reason:** [Oral delivery]
The matter removed from list as there is no proof of service on the respondent.

Case Name: Melvin David Anderson
v
[1] The Attorney General of Antigua and Barbuda

[2] Commissioner of Police
[3] Glennis Simon
[4] Moncy Duncan

[ANUHCVP2013/0018]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett

Respondents: Mrs. Carla Brookes-Harris

Issue: Status of the matter

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

Result/Order: [Oral delivery]
The matter is placed on the next status hearing list for report at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 29th May 2017.

Case Name: Kendall Samuels (Trading as Kendall Autocare and Accessories)
v
[1] The Attorney General
[2] Commissioner of Police

[ANUHCVP2013/0025]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: No appearance
Respondent: Mrs. Carla Brookes- Harris

Issue: Status of the matter

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

Result/Order: [Oral delivery]
The notice of appeal is struck out for want of prosecution.

Reason: The Court noted that the notice of appeal has been filed since 5th December 2013. The Court also had regard to the fact that despite correspondence from the Court requesting that notes of evidence be prepared and filed there is no indication that the appellant is interested in pursuing the appeal and no steps have been taken to prosecute the matter.

Case Name: Port Services Ltd.
v
Kimberly Grant
[ANULTAP2013/0001]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: Mrs. Cherissa Roberts holding papers for Mr. Craig Jacas
Respondent: No appearance

Issue: **Status of the matter**

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

Result / Order: **[Oral delivery]**
The appeal shall stand struck out unless proof of personal service on the respondent is filed by Friday, 24th March 2017.

Reason: **The Court noted that the notice of appeal was filed on 18th July 2013. The Court also noted that there is no proof that the notice of appeal has been served on the respondent.**

Case Name: **Bryon Richards**
v
[1] Glenmore Charles
[2] Marcelle Richards
[3] Ladanski Richards
[ANUHCVP2015/0023]

Date: **Tuesday, 28th February 2017**

Before: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**

Appearances:
Appellant: **Mr. Jarid Hewlett holding papers for Dr. David Dorsett**
Respondent: **No appearance**

Issue: **Status of the matter**

Type of Oral Result/Order Delivered:	Oral Judgment or Decision
Result/Order:	[Oral delivery] This matter is discontinued.
Reason:	The applicant no longer desires to pursue the matter.
Case Name:	[1] Evelyn Sheppard [2] Bradley Lewis [3] Irving Edwards [4] Michael Piggott v Clarvis Joseph [ANUHCVP2013/0007]
Date:	Tuesday, 28 th February 2017
Before:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice
Appearances:	Appellants: No appearance Respondent: No appearance
Issue:	Status of the matter
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result/Order & Reason:	[Oral delivery] The notice of appeal is struck out for want of prosecution.

Case Name: Shawn Adams
v
Marlon Browne trading as Marlon Browne
Construction

[ANUHCVP2011/0029]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of the matter

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

Result/Order: [Oral delivery]
The notice of appeal is struck out for want of prosecution.

Reason: The appeal was filed in 2013. The Court noted that directions were given for the matter to proceed in accordance with the rules of the Court. The Court also noted that there has been no response to correspondence of the Court, that no further steps were taken in the matter and that the appellant appears to not be interested in pursuing his appeal.

Case Name: Saffron Limited

v
Angel Estates Limited

[ANUHCVP2012/0045]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett

Respondent: No appearance

Issue: Status of the matter

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

Result/Order: [Oral delivery]
The notice of appeal herein shall be struck out unless the appellant files proof of service on the respondent in accordance with the rules of court by Friday, 24th March 2017.

Reason: The Court noted that there is no proof of service of the notice of appeal on the respondent in accordance with the rules of court.

Case Name: Jessica Hood

v
[1] Free Trade and Processing Zone Commission
[2] Houghton Forde
[3] Vere Carbon
[4] Angella Gonsalves

[ANUHCVP2012/0018]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: Mr. Jarid Hewlett holding papers for Dr. David Dorsett

Respondents: No appearance

Issue: Status of the matter

Type of Oral Result / Order Delivered: Directions

Result/Order: [Oral delivery]

1. The appellant shall file and serve the record of appeal by 25th April 2017.
2. The appellant shall file and serve skeleton arguments in support of her appeal by 19th May 2017.
3. The respondents shall file and serve skeleton arguments in response by 16th June 2017.
4. The appeal shall be listed for hearing at the next sitting of the Court of Appeal in Antigua and Barbuda following thereafter.

Reason: The Court noted that a notice of appeal was filed on 7th September 2012 and a counter notice filed on 24th September 2012. The Court further also that no further steps have been taken since then.

Case Name:

[1] Winston B. Spencer
[2] Crusader Publications Broadcasting Ltd.
v

Lester Bird

[ANUHCVP2012/0006]

Date: Tuesday, 28th February, 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellants: No appearance

Respondent: Mr. Warren Cassell holding papers for Ms. Rika Bird

Issue: Status of the matter

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

Result/Order: [Oral delivery]

1. The Registrar is to certify part of the transcript and indicate that portion of the missing transcript and forward to the parties a notice of the availability of the same by Friday, 24th March 2017. Thereafter the parties shall submit proposals to the Court as to how the Court should treat with the missing portion of the transcript.
2. The proposals shall be submitted by 21st April 2017.
3. The matter shall be listed for further status hearing at the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 29th May 2017.

Reason: The Court noted that the proceedings in the lower court were recorded on 13 cassettes, 12 of which are available and transcribed by the transcriptionist while one cassette cannot be located.

Case Name: Everal Green

v
[1] The Attorney General
[2] Delisle Narino Mirtha Dra

[ANUHCVP2011/0004]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: No appearance

Respondent: Mrs. Carla Brooks-Harris

Issue: Status of the matter

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

Result/Order & Reason: The notice of appeal filed on 7th March 2011 is struck out for want of prosecution.

Case Name: Gene B. Samuel
v
Sheron Whinfield

[ANUHCVP2009/0005]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of the matter

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

Result/Order: [Oral delivery]
The matter is to be removed from the list.

Case Name: Garfield Morrison
v
[1] The Chief Magistrate
[2] Ivan Walters
[3] Commissioner of Police

[ANUMCRAP2010/0002]

Date: Tuesday, 28th February 2017

Before: The Hon. Dame Janice M. Pereira, DBE, Chief Justice

Appearances:

Appellant: Mr. Warren Cassell

Respondents: Mrs. Shannon Jones-Gittens holding for Mr. Anthony Armstrong, Director of Public Prosecutions.

Issue: Status of the matter

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

Result/Order:

[Oral delivery]

- 1. Leave is hereby granted to the appellant to add the additional ground of appeal as set out in the motion.**
- 2. The appellant is to obtain at his own expense a copy of the notes taken by the prosecution during the trial before the magistrate by Friday, 17th March 2017.**
- 3. The appellant shall prepare a record comprising the said notes together with the affidavit of Brenda Furlong filed and served on 27th January 2017.**
- 4. The appellant shall file the same with the Court and serve a copy of the said record on the respondent.**
- 5. The appellant shall file and serve skeleton arguments by 31st March 2017.**
- 6. The respondent shall file and serve skeleton arguments in response by Tuesday, 18th April 2017.**
- 7. The appeal shall be set down for hearing at the next sitting of the Court of Appeal sitting in Antigua and Barbuda during the week commencing May 29th 2017.**

Reasons:

The Court noted that on the motion filed on 21st February 2017 for adding as an additional ground of appeal on behalf of the appellant which ground of appeal contends that the court has no jurisdiction to try the matter as the offences were allegedly committed in District "B" while the appeal was tried and convicted in District "A", counsel for the respondent did not oppose the adding of this additional ground to the notice of appeal.

APPLICATIONS AND APPEALS

Case Name:

Charles Khoury

v

Agnes Khoury

[ANUHCVP2016/0012]

Date:

Monday, 27th February 2017

Coram:

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

Appearances:

Appellant: Dr. Errol Cort with him, Mrs. Sharon Cort-Thibou

Respondent: Mr. John Carrington, QC with him, Ms. Sandy Ann Khouly and Ms. Kalisia Marks

Issues:

Interlocutory Appeal – Whether the learned trial judge erred in her evaluation exercise and in the exercise of her discretion

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

Oral Judgment or Decision

Result/Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. Costs are awarded to the respondent to be assessed by the court below unless agreed within twenty-one (21) days.**
- 3. The stay granted by His Lordship the Hon. Mr. Paul Webster on 24th January 2017 is hereby lifted with costs to the respondent to be assessed by the court below unless agreed within twenty-one (21) days.**

Reason:

This appeal is against the judge's dismissal of the appellant's application for the striking out of the claim in the action on the basis that the Court had no jurisdiction to try the claim. The application was brought pursuant to the Civil Procedure Rules 9.7(1) and sought only the striking out of the claim on the basis of lack of jurisdiction. No other relief was sought. The learned judge having heard the application and the parties having argued on the basis of forum non conveniens which is normally considered under CPR 9.7A that the court should not exercise its jurisdiction and in fact grant a stay of the claim. The court also ruled that the appellant/defendant had not discharged the burden of showing that New York was distinctly a more appropriate forum for the trial of the claim. Essentially though, the learned judge dismissed the application on the basis that the court had no jurisdiction.

The appellant raised various grounds of appeal but the Court was of the view that the question is whether the learned judge was right to dismiss the application under 9.7 of the Civil Procedure Rules. The claim brought in this jurisdiction by the claimant who now resides in Florida was served on the defendant who resides in Antigua and carries on business here although he also has business interests in New York and a US address. The claim relates to an alleged loan said to be made by the claimant to the defendant in relation to a real estate project in New York for which repayment is sought. The defendant denies any loan from the claimant and states that a letter in 2013 acknowledging the same with a promise to pay either in Florida or in Antigua is not of his making. The Court observed that the defendant's application was not one seeking a stay of the claim on the basis that the Court should refrain from exercising its jurisdiction in favour of New York as a more suitable forum, rather, the application was one simply disputing that the Court had jurisdiction in respect of the claim and seeking that the claim be struck out on this basis.

While the appellant challenged the fact that the judge considered that the application disputing the court's jurisdiction was not properly before her, the same having been made out of time. As it turned out, the parties had agreed an extension of time but the defendant/applicant had failed to apprise the Court of this fact. The Court did not consider that anything turns on this fact other than to say that the judge could not be faulted in taking this view having not been made aware of the extension agreed as required by the rules. The Court was further of the view that the learned judge's decision does not rest on this aspect of the matter, rather the learned judge found on good and well-established authority at paragraph 32 of her judgment that where a defendant is served personally with the claim in a jurisdiction that jurisdiction is then founded as of right. The Court pointed out that this trite principle is set out in the locus classicus on forum non conveniens namely, Spiliada Maritime Corporation v Cansulex Ltd [1987] AC 460, a House of Lords decision of the United Kingdom and which has been followed by our courts in many other decisions. The Court was accordingly of the view that on the trial judge treating with the application as it stood before her and based on the singular relief sought, this would have been sufficient to dispose of the

appellant's application. Civil Procedure Rules 11(13) states clearly that "An Applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission." Here, the court did not give permission. The learned judge refused to allow an oral application to convert the application from one disputing jurisdiction to one seeking a stay in the exercise of the court's discretion on forum non conveniens grounds. This notwithstanding, the learned judge addressed the arguments advanced in respect of forum non conveniens. After discussing the principles, the judgment clearly shows that the learned judge in applying the principles of *Spiliada* undertook an evaluative exercise in seeking to determine the place with which the claim appeared to have the most natural connection. She considered the place of residence of the parties at paragraph 54 and it is worthwhile simply reciting what the learned judge said at paragraph 54: "Neither Charles nor Agnes resides in New York. As previously stated, Charles resides permanently in Antigua and Agnes resides in Florida. The fact that Charles lives in Antigua permanently is a factor that will militate against a stay of the proceedings. This proposition finds support in the case of Banco Atlantico SA v the British Bank of the Middle East [1990] 2 Lloyd's Rep 504 wherein Bingham LJ said at page 510, "*It must be rare that a corporation resist suit in its domiciliary forum. Rarely would this court refuse jurisdiction in such a case ... very clear and weighty grounds for doing so were not shown.*"

The Court was of the view that no fault can be found in the application of the principles therein stated by the judge. The learned judge also considered where the parties do business and concluded that there were factors neutral to both. Having considered the availability of witness, their languages and documents, the learned judge found some of those factors as being neutral while the location of documents may favour New York. The learned judge considered the issue of the law of the contract as well as considered the issue of the practicality of enforceability of a judgment. The learned judge eventually drew the strings of her evaluation together at paragraph 68 and concluded at paragraphs 69 and 70 where she found in paragraph 69, "*that it is well settled that where there are factors pointing to more than one jurisdiction, the Court will not likely disturb the Claimant's choice of forum if it is brought in the jurisdiction where the defendant resides ...*" At paragraph 70, the learned judge had this to say: "When all relevant

factors are considered and having considered the affidavit evidence and the competing arguments, I find that the applicant has not shown that New York is clearly or distinctly more appropriate than Antigua for the determination of the issues having regard to the interest of both parties and the ends of justice. Lord Goff in *Spiliada* stated that, "*there are cases where no particular forum can be described as a natural forum and there is then no reason to grant a stay where jurisdiction is founded as of right. In my judgment this is such a case.*" The learned judge declined to stay the proceedings and found that the appellant had not shown that New York was clearly or distinctly a more appropriate forum for the trial of the dispute.

The Court noted that the appellant has a task of seeking to demonstrate to this appellate court that the learned trial judge erred in her evaluation exercise and in the exercise of her discretion. The Court also pointed out that the appellant must demonstrate that the error or that the degree of error was so wrong as to be considered to be blatantly wrong or that it fell far outside that generous ambit of discretion within which reasonable disagreement is possible. These principles on discretion are set out Dufour v Helenair Corporation Ltd. (1996) 52 WIR 188 which is well known to this Court. Furthermore, the Court drew on the words of Lord Neuberger in VTB Capital plc v Nutritek International Corporation and others [2013] 1 All ER 1296 referred to by the respondents in their submissions at paragraph 28 where Lord Neuberger had this to say: "*The jurisdiction to stay is liable to be perverted if parties litigate the issue at different levels of the judicial hierarchy in the hope of persuading a higher court to strike a different balance in the factors pointing for and against a foreign forum. An appellate court should be vigilant in discouraging appellants from arguing the merits of an evaluative interlocutory decision reached by a judge who had to balance the various factors relevant to the appropriate forum when the complaint is, in reality, that the balance should have been struck differently.*"

The Court was of the view that this is precisely what the appellant seeks on this appeal. Although the judge may have referred to a consideration such as damages that was not a feature of this case, overall it cannot be said that this singular irrelevant consideration has the effect of diminishing her overall consideration of the relevant

factors. Therefore, for this additional reason the Court dismissed the appeal as the appellant had clearly not demonstrated that the slight error made by the judge affected her overall evaluation of the factors before her or the exercise of her discretion.

The Court noted as a further reason for the dismissal of the appeal and which perhaps should have come first is that the respondent, as set out in their counter notice, the applicant has not shown that New York was an available forum. The evidence on this would clearly fall short and this would have therefore afforded an additional reason for the Court not acceding to the application on the basis of forum non conveniens because it has not been demonstrated that New York is indeed even an available forum. This is based on the very subject matter of the claim and the burden to demonstrate that New York was an available forum would have rested on the appellant.

For these reasons above the Court dismissed the appeal with costs to the respondent to be assessed by the court below unless agreed within 21 days. The stay granted by Justice of Appeal Webster on the 24th January 2017 was lifted. The stay granted by Webster JA on 24th January 2017 was lifted with cost to the respondent to be assessed by the court below unless agreed within the same 21 days.

Case Name:

Robin M. Yearwood

v

Christina Yearwood

[ANUHCVP2015/0015]

Consolidated with

[ANUHCVP2015/0019]

Date:

Monday, 27th February 2017

Coram:

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

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Reginald Amour, SC., Justice of Appeal, [Ag.]

Appearances:

Appellant: Mr. David Joseph, QC with him Ms. Andrea Smithen

Respondent: Dr. David Dorsett with him Mr. Jarid Hewlett

Issues: Civil Appeal – Whether the learned judge erred in ruling that there was power to register the foreign judgment outside of the jurisdiction in accordance with CPR 72 – Whether Reciprocal Enforcement of Judgments Act Cap 369 is applicable – Whether the effect of the judgment below was to re-litigate the registration issue – Whether registration outside statutory time limit

Type of Oral Result/Order Delivered: N/A

Result/Order: [Oral Delivery]
Judgment is reserved.

Case Name: Andre Michael
v
Kenneth Providence
[ANUHCVP2016/0018]

Date: Tuesday, 28th February 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Clare Henry, Justice of Appeal, [Ag.]

Appearances:
Appellant: Ms. Safiya Roberts with her, Ms. Kamilah Roberts

Respondent: No appearance

Issue: Application for leave to appeal

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

Directions

Result/Order:

[Oral delivery]

- 1. Leave to appeal is granted.**
- 2. The applicant to file notice of appeal within 21 days of today's date.**

Reason:

The applicant has satisfied the threshold required for a grant of leave to appeal.

Case Name:

**David Daniel
v
The Queen**

[ANUHCRA2015/0016]

Date:

Tuesday, 28th February 2017

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Clare Henry, Justice of Appeal, [Ag.]**

Appearances:

Appellant: Mr. Sherfield Bowen

**Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions
with him, Mrs. Shannon Jones-Gittens**

Issues:

**Criminal appeal against sentence – Serious indecency –
Application for an adjournment**

**Type of Oral
Result / Order
Delivered (if**

Directions

applicable):

Result/Order:

[Oral delivery]

- 1. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 29th May 2017.**
- 2. The respondent is to file and serve written submissions and authorities on or before 14th March 2017.**

Reason:

Counsel for the appellant filed his submissions after deadline stated in the order as such the DPP has not filed his submissions.

Verbin Bowen

v

The Queen

[ANUHCRA2014/0005]

Date:

Tuesday, 28th February 2017

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Clare Henry, Justice of Appeal, [Ag.]**

Appearances:

Appellant: Mr. Dane Hamilton, QC

**Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions
with him, Mrs. Shannon Jones-Gittens**

Issues:

Criminal appeal against conviction – Rape – Application for an adjournment

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

Directions

Result/Order: [Oral delivery]
The hearing of this appeal is traversed to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 29th May 2017.

Reason: The application for an adjournment is upon the request of the Director of Public Prosecutions in order to file submissions.

Case Name: Joseph Charles
v
The Queen
[ANUHCRA2016/0001]

Date: Tuesday, 28th February 2017

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal

Appearances:
Appellant: Mr. Cosbert Cumberbatch
Respondent: Mrs. Shannon Jones-Gittens holding papers for Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Criminal appeal against conviction – Indecent Assault – Application for an adjournment

Type of Oral Result / Order Delivered: Directions

Result/Order: [Oral delivery]
1. The appellant is granted leave to file and serve skeleton

arguments together with authorities on or before 31st March 2017.

2. The respondent is granted leave to file and serve skeleton arguments together with authorities on or before 28th April 2017.
3. The hearing of this appeal is adjourned and traversed to the next sitting of the Court in the State of Antigua and Barbuda during the week commencing 29th May 2017.
4. This is the final adjournment.

Reason: Counsel for the appellant was recently instructed thus seeking an extension of time to file and serve submissions.

Case Name: Jesus Junkere
v
The Queen

[ANUHCRA2013/0001]

Date: Tuesday, 28th February 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Clare Henry, Justice of Appeal, [Ag.]

Appearances:

Appellant:	Mr. Sherfield Bowen holding papers for Mr. Lawrence Daniels
Respondent:	Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – Manslaughter – Counsel for the appellant recently assigned to the appellant by the court – Application for an adjournment

Type of Oral Result / Order Directions

Delivered:

Result/Order:

[Oral delivery]

- 1. The appellant shall file and serve written submissions with authorities on or before 31st March 2017.**
- 2. The respondent shall file and serve written submissions with authorities on or before 30th April 2017.**
- 3. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in the state of Antigua and Barbuda during the week commencing 29th May 2017.**

Reason:

The Court noted that Mr. Lawrence Daniels was recently court assigned to the appellant and thus granted an adjournment to allow submissions to be filed and served.

Case Name:

Jerome Henry

v

The Queen

[ANUHCRA2015/0007]

Date:

Tuesday, 28th February 2017

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Clare Henry, Justice of Appeal, [Ag.]**

Appearances:

Appellant: Mr. Sherfield Bowen

**Respondents: Mr. Anthony Armstrong, Director of Public Prosecutions
with him, Mrs. Shannon Jones-Gittens**

Issues:

**Appeal against conviction – Building Breaking/Larceny –
Whether the trial judge failed to properly direct the jury on
the appellant's defence**

Type of Oral

Oral Judgment or Decision

**Result/ Order
Delivered:**

Result / Order:

[Oral Delivery]

- 1. The appeal is dismissed.**
- 2. The sentence and conviction are affirmed.**

Reason:

The appellant Jerome Henry was convicted of the offence of building breaking and larceny and was sentenced to a term of five years imprisonment that was suspended for three years. The appellant appeals against both his conviction and sentence. In his notice of appeal he outlined several grounds of appeal but at the hearing of this appeal learned counsel Mr. Bowen very helpfully summarised those grounds into one main submission that the learned trial judge had failed to properly put the defence of the appellant to the jury.

The case for the defence was that on the evening of 9th November 2011 while in the company of some friends he was stopped by the police. The police searched the car that the appellant was being driven in when they found some goods that were stolen sometime between the evening of 6th November 2011 and the morning of 7th November 2011 from the Woods Pharmacy. The appellant's defence was that the police did not arrest him on the morning of November 7th mere hours after the break in at the Woods Pharmacy would have occurred; but rather two days later on 9th November. The police station diary that was tendered in evidence showed that the appellant was arrested on 9th November, but the evidence of the police was that he was arrested on 7th November.

The learned trial judge while he read the statement of the appellant in his summation to the jury did not specifically explain to the jury that the appellant was contesting the date when the offence was alleged to occur. The appellant's defence was that he was arrested on 9th November and as a result of that he did not commit the burglary.

In the Court's view the doctrine of recent possession even if the goods were found in the possession of the appellant on 9th November and the goods were stolen between 6th and 7th November would have made no difference in the operation of the doctrine of recent possession which was

clearly explained to the jury. The jury heard the evidence of the prosecution, the appellant and the police and the doctrine was explained to them.

The Court was also of the view that there is no doubt that the jury fully understood the evidence and rejected the evidence of the appellant. In any event in respect of the time, in the Court's view, there is not much difference between 7th November and 9th November. In any event, it was open to the jury to find the appellant guilty of breaking into Woods Pharmacy.

The Court concluded that there is no merit in the appeal against conviction. In relation to the sentence learned counsel wisely did not pursue this ground vigorously as in the Court's the sentence was quite lenient. The appellant did not have any previous convictions and this no doubt would have weighed heavily on the learned judge and the reason why the learned judge gave quite a lenient sentence. The Court therefore saw no reason to interfere with the learned judge's sentence, so for those reasons the Court dismissed the appeal and confirmed the sentence and conviction handed down by the learned trial judge.

Case Name:

The Queen

v

[1] Warren Cassell

[2] Cassell & Lewis Inc.

[MNIHCRAP2012/0001]

(Montserrat)

Date:

Tuesday, 28th February 2017

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellant:

**Mr. Oris Sullivan, Director of Public Prosecutions with him,
Mrs. Kristen Taylor-Hilton**

Respondent: Dr. David Dorsett

Issue: Application for a determination by the Court of Appeal as to whether there should be a retrial or to receive a new trial having regard to the Privy Council decision

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

Result / Order: [Oral Delivery]
The Office of the Director of Public Prosecutions is directed that there should be no retrial.

Reason: The matter before this Court arose from the conviction of the appellant who is the respondent in the application before the Court on several charges including conspiracy to defraud, procuring the execution of valuable securities by deception and money laundering. The appellant appealed against his convictions to the Court of Appeal where the convictions for money laundering were quashed. The Court affirmed his convictions for the other offences, i.e. defrauding, procuring the execution of valuable securities by deception and dismissed his appeal with respect to them. The appellant further appealed to the Privy Council that allowed his appeal with respect to all of the convictions. The Privy Council, however, remitted to the Court of Appeal the issue as to whether or not the respondent ought to be re-tried. The Court heard the submissions of the Director of Public Prosecutions and also read his written submissions in which he urged the Court to order a retrial of the respondent.

The factors that the Court ought to consider in deciding whether to order a retrial have been set out in several cases including by this Court in the case of *Sherfield Bowen v The Queen* ANUHCRA2005/0004 (delivered 20th June 2007, unreported). The factors, principally, the seriousness of the offence, the nature of the offence, the strength of the evidence against the appellant, the publicity which the trial had obtained and whether that would operate to the prejudice of either party, the sentence imposed on the respondent, and the interest of the justice. In examining

the interest of justice, there are a number of considerations that the Court would bear in mind including those factors in favour of the accused person, the respondent so as to ensure that no injustice is caused but the public interest factor is also one of the considerations that the Court must bear in mind.

The Court noted that in the circumstances of this case the respondent was sentenced to two and a half years imprisonment and he has served the sentence in its entirety. The Court indicated that it has not been able to find a single case in which a person has served the entire term for which he was convicted and yet a retrial was ordered. On several occasions the question was put to the Director of Public Prosecutions if there was any authority to which he could refer and the Director of Public Prosecutions was unable to guide the Court as to any authority. There are a number of cases where a person has served a considerable part and the Court may yet make a determination that the overall interests of justice require that a retrial be held.

In this situation, the respondent having served the entire sentence and taking into consideration as well the other factors that a court is required to consider, the Court was of the view that the interest of justice would point in the direction of not ordering a retrial in this particular case. The Privy Council has quashed the convictions of the appellant. The matter was remitted to the Court to determine whether he ought to be retried. The Court determined that there ought not to be a retrial and the Director of Public Prosecutions will act accordingly having been so directed by this Court.

Case Name:

Fitzroy Farrell

v

The Queen

**[MNIHCRA2015/0004]
(Montserrat)**

Date:

Tuesday, 28th February 2017

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ralph Francis

Respondent: Mr. Oris Sullivan, Director of Public Prosecutions with him,
Mrs. Kristen Taylor-Hilton

Issues: Appeal against conviction – Drug trafficking – Procedural irregularity – Unavailability of the learned trial judge's summation – Whether verdict unsafe and unsatisfactory

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

Result / Order: [Oral Delivery]
1. The appeal is dismissed.
2. The conviction of the appellant is upheld.

Reason: This is an appeal against the conviction of the appellant in relation to drug trafficking under the Drug Prevention of Misuse Act, Chapter 407 of the Laws of Montserrat. The appellant having been convicted of the offence appealed against his conviction. The appellant filed a notice of appeal in which he puts in issue the question of procedural irregularities in the conduct of the trial and the safety and satisfaction of the conviction.

Having filed an original notice of appeal, when the matter came up for hearing of the appeal the counsel for the appellant at that stage, sought the leave of the Court to file amended grounds of appeal. The Court granted leave to the appellant and was provided only 27th February 2017 with the amended grounds of appeal although they are dated sometime in November 2016. In fact, the learned Director of the Public Prosecutions before the morning of 28th February 2017 did not have sight of these amended grounds of appeal.

When one looks at the grounds of appeal, there were only two grounds presented by the appellant. One headed general procedural irregularity which barely mentions the fact that on the first day of the trial Ms. Penna who was called as a witness for the Prosecution was giving evidence when the luncheon recess was taken and that in the course of the recess the witness was taken into custody by the police and then at the resumption continued her evidence. The second ground was that the verdict of the jury was unsafe and unsatisfactory. The appellant presented the Court on this ground with a number of instances where the appellant considered that there were problems with what had transpired. At no time was the Court taken to some definite event that occurred or provided with a statement which was made the basis upon which the Court can determine that the verdict was unsafe and unsatisfactory. Just a number of things pointed out numbered A to L none of which either by themselves or collectively would have cause the Court to come to the conclusion that the verdict of the jury was unsafe and unsatisfactory.

The Director of Public Prosecutions disputed the statements made by counsel for the appellant both in its written submissions and in its oral submissions made before this Court and there is nothing on the record which would support the procedural irregularities alleged by counsel for the appellant. The Director of Public Prosecutions however went further to indicate that even if there were procedural irregularities, they were not so egregious in nature as to justify the Court vitiating the conviction of the appellant by the jury. Having considered the submission of counsel for the appellant and the response by the learned Director of Public Prosecutions, the Court was not satisfied that there was any procedural irregularity established on the record such as to justify the Court's interference with the verdict of the jury. The Court also found that nothing presented to the Court either in the written or oral submissions of counsel for the appellant would render the verdict of the jury unsafe and unsatisfactory.

The Court found it noteworthy that counsel had submitted the record of appeal without including the learned judge's summation. In fact counsel did point the Court to the place in the record where it was indicated that there was no summation or that the record had stopped without any summation contained in it. The Court noted however that

this was not made a ground of appeal. Nowhere in the appellant's grounds or amended ground was the fact of the lack of summation presented as a ground. The court cannot on the basis of what is now being said by counsel for the appellant interfere with the verdict of the jury. In the circumstances, the Court found that there is no basis to overturn the verdict of the jury and to quash the conviction. The appeal was accordingly dismissed and the conviction of the appellant was affirmed.

Case Name:

The Tides Restaurant Limited

v

Didier Deleau

[ANULTAP2015/0004]

Date:

Tuesday, 28th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal, [Ag.]**

Appearances:

**Appellant: Mr. Kendrickson Kentish with him, Ms. Kathleen Benett and
Ms. Amaya Athill**

Respondent: Mr. Hugh Marshall, Jr. with him, Ms. Kema Benjamin

Issues:

**Civil Appeal – Appeal against findings of fact and law –
Dismissal on the basis of misconduct, incapacity for
performing tasks, loss of confidence – Whether the
respondent's prolonged absence from work was sufficient
evidence of poor performance to justify dismissal –
Whether the respondent's failure to clock in sufficient
evidence of misconduct to justify dismissal – Whether the
respondent should have been given an opportunity to be
heard**

Type of Oral

Oral Judgment or Decision

**Result/Order
delivered:**

Result / Order:

[Oral Delivery]

- 1. The appeal is dismissed.**
- 2. No order as to costs.**

Reason:

The appellant operates a restaurant in Antigua. The respondent was the general manager of the restaurant. On Valentine's day in 2011, the respondent reported late to work. The owner of the restaurant was unhappy with the respondent's tardiness and issued to him a warning letter. The letter is dated 15th of February 2011 and the first paragraph reads: "Please be advised that for the following reasons listed below, you are being put on notice that if this behaviour happens again, your employment at the Tides Restaurant will be terminated."

In June of the same year, the respondent was again late for work. He should have shown up for work at 1:30 p.m. but he did not show up until 4:30 p.m., three hours late. There was a dispute as to what was the agreed time for him to arrive at work but the Industrial Tribunal made a finding that he should have arrived at work at 1:30 p.m. and the Court indicated that it has no intention of interfering with that finding. As a result of arriving late to work in June, the respondent was terminated.

The termination letter dated 6th June 2011 states in its penultimate paragraph, "Your services at the Tides Restaurant are terminated as of today's date for failing to show up for work on 5th June, 2011 at the time agreed upon and as such not performing your duties as described in your contract." The employer then terminated the services of the respondent.

The respondent challenged his dismissal at the Industrial Court that held that his dismissal was unfair. The appellant, the restaurant owner, has appealed against the decision of the Industrial Court. The issues that arise on the appeal are set out in the appellant's skeleton arguments. They are listed as:

- 1. Was Mr. Deleau's prolonged absence from work on 5th June 2011 sufficient evidence of poor performance to justify dismissal in the**

- circumstances?
2. Was Mr. Deleau's failure to clock in on t5th June 2011 sufficient evidence of misconduct to justify dismissal in the circumstances?
 3. Should the respondent have been given an opportunity to be heard?

The Industrial Court found among other things that the respondent should have been giving an opportunity to be heard and they also found that his dismissal was unfair and awarded him damages.

The Court noted that it has reviewed the evidence in this case, listened to the submissions of counsel and read the written submissions. The Court was mindful of its role as an appeal court, that role being very carefully set out in the appellant's skeleton argument and it is in summary that it is not for this Court to decide what is fair and unfair. The duty as a court of review is to review what was done in the industrial court and confirm with the industrial court decision unless the court is satisfied that they erred as a matter of law or as a matter of fact. The Court was satisfied that there is no basis on which it can interfere with the decision of the Industrial Court and in the circumstances the appeal was dismissed. In exercising the Court's discretion under the Industrial Court Act, the Court made no order as to costs.

Case Name:

**Ahmed Williams
v
The Supervisory Authority
[ANUHCVP2015/0035]**

Date:

Tuesday, 28th February 2017

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal, [Ag.]**

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Justin Simon, QC. With him, Mr. Kwame Simon

Issues: Civil appeal – The Misuse of Drugs Act CAP 283 – Section 12(1) possession of cocaine with intent to sell – Section 6(3) possession of cocaine with intent to supply – Whether the type of underlying matter was an offence at the time of conviction and a statutory offence at the time of commission

Type of Oral Result/Order delivered: N/A

Result / Order: [Oral Delivery]
Judgment is reserved.

Case Name:

[1] Xavier Mason
[2] Cornell Humphreys
[3] Colin Barnes
[4] Cameron Thomas
[5] Lyndon Greene
v
Antigua Port Authority
[ANUHCVP2011/0027]

Date: Tuesday, 28th February 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. Clare Henry, Justice of Appeal, [Ag.]

Appearances:

Appellants: Ms. Amaya Athill

Respondent: Mr. Rushaine Cunningham holding papers for Mr. Craig Jacas

Issue: Application for an adjournment

Type of Oral Result/Order delivered: Directions

Result / Order: [Oral Delivery]
The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week of 29th May 2017.

Reason: The appeal was adjourned on account of the illness of counsel for the respondent.

Case Name: Trevor Santos
v
Horizon Constructions Ltd.
[ANUHCVP2011/0015]

Date: Wednesday, 1st March 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:

Applicant: Ms. E. Ann Henry, QC with her, Ms. Mandi Thomas

Respondent: Mr. Rushaine Cunningham holding papers for Mr. Craig Jacas

Issues: Application to agree and settle transcript for use in appeal – Court unable to produce notes of evidence or recordings for record of appeal

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

Directions

Result/Order:

[Oral delivery]

- 1. The parties hereto shall meet and agree to settle the notes of evidence or any other statements of what occurred at the trial of the action and deliver the same to the court office having duly signified in writing that they agree that the same shall be used in the appeal within 21 days of the date of this order.**
- 2. The appellant shall file the record of appeal within 21 days of the agreement of the record of appeal by the parties.**
- 3. The appellant shall file and serve skeleton arguments within 21 days of the filing of the record of appeal.**
- 4. The respondent shall file and serve within 21 days of receipt of the appellant's skeleton arguments.**

Reason:

The High Court was unable to produce notes of evidence or recordings for the record of appeal.

Special Security Services

v

Jamiel Jashon McDonald

[ANUHCVP2017/001]

Date:

Wednesday, 1st March 2017

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Reginald Armour, Justice of Appeal, [Ag.]**

Appearances:

Applicant: Ms. Fiona Murphy

Respondent: Mr. Wesley George

Issues: Application for leave to appeal – Application to stay of further proceedings – Application for notice of appeal to be struck out for not being in compliance

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

Result/Order: [Oral delivery]

1. The notice of appeal filed on 4th January 2017 by the appellant Special Security Services Ltd. is struck out as being a nullity. The said notice of application having been filed without leave of the Court.
2. Costs are awarded to the respondent in the sum of \$750.00.
3. The applicant is granted an extension of time to 30th January 2017 in terms of the notice filed on that date.
4. Leave is granted to the appellant to appeal the decision of the learned master made on 23rd November 2016.
5. The notice of appeal shall be filed within 21 days of this order.
6. The costs of the application shall be costs in the appeal in relation to the stay of execution.
7. Paragraphs 5, 6 and 7 of the order of the learned master made on 23rd November 2016 are stayed pending the determination of the appeal.
8. Costs in this application will be costs of the appeal.

Reason: Counsel for the applicant filed notice of appeal on 4th January 2017 without leave of the Court. Counsel upon realising that the application was a nullity, filed an application for an extension of time and sought leave of the Court to Appeal.

Case Name: Ronald Samuel
v
The Queen

[ANUHCRA2015/0014]

Date: Wednesday, 1st March 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Mr. Sherfield Bowen

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions
with him, Mrs. Shannon Jones-Gittens

Issues: Appeal against conviction – Rape – Buggery – Application
for an adjournment

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

Result / Order: [Oral Delivery]

1. The hearing of this appeal is traversed to the next sitting of the Court of Appeal in the State of Antigua and Barbuda during the week commencing 29th May 2017.
2. The appellant shall file and serve submissions with authorities on or before 31st March 2017.
3. The respondent shall file and serve submissions with authorities within 21 days of receipt of the appellant's submissions.

Reason: The hearing of the appeal was adjourned upon the request of counsel for the appellant to enable him to file his submissions.

Case Name: Glenda Hanley

v
Colin Hanley

[ANUHCVP2015/0015]

Date: Wednesday, 1st March 2017

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal, [Ag.]
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Mr. John Fuller

Respondent: Ms. E. Denecia Thomas

Issues: Civil appeal – Whether learned trial judge erred in refusing appellant’s claim for a possessory title to property registered in the name of the respondent

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

Result/Order: [Oral Delivery]
1. The appeal is dismissed.
2. Costs are awarded to the respondent as to two-thirds if the costs ordered in the court below.

Reason: This is an appeal against the decision of the learned trial judge refusing the appellant’s claim for a possessory title to property registered in the name of the respondent. The appellant and respondent were husband and wife. The respondent acquired title to the subject property and built a house on it and the parties moved into the house as husband and wife. In 1983 the respondent went to England to study, on one of his return trips to Antigua in 1985 by then unhappy differences had developed between the parties and the appellant went to court and got an injunction restraining the respondent from entering the property. The respondent gave the court an undertaking to

replace the injunction and undertook not to return to the property while court proceedings were pending and he then returned to England. The respondent visited the property in 2001 and noticed that the property appeared to be unoccupied. The respondent also returned in 2010 where he found the appellant's nephew in occupation of the property and instructed the appellant's nephew to move out. In fact he went further and gave him a notice to quit.

The appellant then served a second injunction against the respondent and later filed a claim that is the subject of the appeal. The claim filed is for possessory title of the property based primarily on the husband's abandonment of the property commencing in 1986. She also sought to extinguish the husband's title to the property. The trial judge rejected the claim and the appellant appealed to this court.

The Court reviewed the evidence in the case and submissions of counsel and taken note of Ms. Thomas' written submissions.

The Court noted that on the issue of the claim for possessory title, the trial judge found that the appellant's entry onto the property when the parties were still husband and wife was permissive. On the question of his abandonment of the property the judge found at paragraph 16 of the judgment that *"Counsel for the claimant emphasized 25 years absence of the defendant from the property. This cannot be held against the defendant for any attempt to reenter might have amounted to a contempt of court for breach of his undertaking."* The Court found that this finding by the judge is correct.

When the respondent left the property and travelled to England in 1986 having given an undertaken to the court not to return to the property this was leaving under compulsion of court and not of his own free will. The respondent was simply acting in accordance with the court's order replaced by his undertaking. Counsel for the appellant argued that this amounted to an abandonment of the property. The Court however reasoned that where a person leaves his own property because of a court order, that act cannot in and of itself amount to an abandonment. It may be possible that over time that time can begin to run against the respondent in terms of a case for adverse possession. The Court stated that there is no evidence in

this case, on which it could find that his initial leaving changed to a situation where it can be said that he abandoned his property.

The Court found that the time that is required for a claim for adverse possession to succeed did not start to run against the respondent. The Court therefore agreed with the judge's conclusion in paragraph 16 of the judgment that there was no abandonment of the property by the respondent and that the appellant's claim for an adverse title to the property fails.

The appellant in her notice of appeal raised an alternative relief for the Court to grant a declaration that she has acquired a beneficial interest in the property and also to quantify that interest. The Court noted however that the claim for a beneficial interest by the appellant was not made before the High Court judge and there was nothing for the High Court judge to treat with regarding the beneficial interest of the appellant. In the circumstances the Court held that it could not make a declaration as to any beneficial interest of the appellant in the property and even more so the Court is not in a position to quantify such interest. The appeal was accordingly dismissed.

Case Name: Joseph W. Horsford, as sole administrator of the
Estate of William Horsford (deceased)
v
Geoffrey Croft
[ANUHCVP2014/0028]

Date: Wednesday, 1st March 2017

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

Appearances:
Appellant: In person

Respondent: Mr. D. Raimon Hamilton

Issues: Civil Appeal – Transfer of parcel of land – Right of way over Lower road – Easement of necessity – Encroachment – Whether learned trial judge adopted and erred in applying the learning in Dabbs v Seaman to case at bar – Whether learned trial judge failed to take into account relevant facts – Whether learned trial judge erred by not having regard to appellant’s evidence

Type of Oral Result/Order Delivered: N/A

Result / Order: [Oral Delivery]
Judgment reserved.

Case Name: Errol Barnes
v
The Commissioner of Police
[ANUMCRAP2013/0001]

Date: Wednesday, 1st March 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:
Appellant: Mr. Lawrence Daniels
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions & with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against sentence – Possession of cannabis

– Possession with intent to supply

Type of Oral
Result / Order
Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The sentence is varied from \$50,000.00 to a sum of \$5,000.00 to be paid within one month and in default of payment, six (6) months imprisonment.
2. In the event of a default in payment of the fine the time spent in custody will count as the default payment.

Reason:

The learned magistrate failed to take into account adequate consideration of the appellant's guilty plea. However, the appellant was in custody while the appeal was filed and on that account was unable to be out on recognizance as he is awaiting trial on another charge. The Director of Public Prosecutions recommended that the court considered of varying the sentence imposed from \$50,000.00 to \$5,000.00 and in respect of default any time served in custody would count as payment and thus the appellant will not have to pay the fine.

Case Name:

James Pelle

v

The Commissioner of Police

[ANUMCRAP2011/0001]

Date:

Wednesday, 1st March 2017

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:

Appellant:

No appearance

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions & with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – Malicious Damage

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

Result/Order & Reason: [Oral Delivery]
1. The appeal is struck out for want of prosecution.
2. The conviction and sentence are affirmed.

Case Name: Anthony Browne
v
The Commissioner of Police
[ANUMCRAP 2012/0005]

Date: Wednesday, 1st March 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Mr. Justin L. Simon, QC. with him, Mr. Kwame L. Simon

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – Larceny – Incomplete record of appeal

Type of Oral Directions

**Result / Order
Delivered:**

Result / Order:

[Oral Delivery]

- 1. The Chief Magistrate shall produce a written certificate to the Registrar of the Court that the record of proceedings filed in the Court Office on 15th December 2016 is the complete record of the proceedings including all documents which were tendered in the proceedings.**
- 2. The Chief Magistrate shall confirm whether a statement to the police by Dante Tagliaventi was tendered in the Magistrate's court. In the event that this was done, the Chief Magistrate shall produce a copy of such statement to the Registrar of the High Court.**
- 3. This certificate shall be produced by the Chief Magistrate within twenty-eight (28) days.**
- 4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the State of Antigua and Barbuda during the week commencing 29th May 2017.**
- 5. A copy of this order shall be served on the Chief Magistrate by the Registrar of the High Court.**

Case Name:

Washington E. Bramble

v

[1] Vere Brown, Commissioner of Police

[2] Jo'anne Walsh, Chief Magistrate

[ANUMCRAP2013/0002]

Date:

Wednesday, 1st March 2017

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

with him, Mrs. Shannon Jones-Gittens

Issues: Criminal appeal against conviction – Malicious Damage – Application to strike out charge

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

Result / Order: [Oral Delivery]
1. The appeal against conviction and sentence is allowed.
2. The conviction and sentence are set aside.

Reason: The court is of the view that based on the evidence submitted that the magistrate could have properly convicted you of the offence. However, other matters have intruded which casts doubt on the safety of the conviction.

Case Name: Gemal Benjamin
v
The Queen

[ANUHCRA2015/0004]

Date: Thursday, 2nd March 2017

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. Dane Hamilton, QC.
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions with him, Mrs. Shannon Jones-Gittens

Issues:	Criminal appeal against conviction – Aggravated robbery
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result/Order:	[Oral Delivery] 1. The appeal is allowed. 2. The Director of Public Prosecutions is directed that there should be no retrial.
Reason:	This is an appeal against the conviction of Gemal Benjamin. The main crux of the appeal is the failure of the trial judge to give the jury directions on voice identification. The Court read the very helpful submissions of learned Queen's Counsel, Mr. Hamilton and the learned Director of Public Prosecutions. The Court also had the benefit of listening to the learned Director of Public Prosecutions and was satisfied that the learned trial judge erred and did not address the jury on the issue of voice identification especially as it was critical. This matter involved an alleged perpetrator who at the time of the offence was wearing a mask and the words used were, "Give me the money or Gi me de money". This was the only evidence on which the Crown had relied in order to link the appellant to the offence. The Court noted that the law and rules are very clear and specifically indicate that there is an obligation on the trial judge in these circumstances to give a stern warning to the jury particularly in circumstances where it turns exclusively on voice identification. The Court referred to the case of <i>Donald Phipps v The Director of Public Prosecutions and The Attorney General of Jamaica</i> [2012] UKPC 24 which indicates that the duty is even higher and stronger where the Crown relies on voice recognition. Scientifically it has been proven that voice identification is more difficult to determine than visual identification. The case of <i>R v Flynn and St. John</i> [2008] 2 Cr App R 20 is also instructive in this regard. The Court noted that in addition to not giving any proper directions in accordance with the Turnbull rules, the

learned trial judge did not assist the jury in weighing the strength and weakness of the prosecution's case and in this case it was critical to so do. The evidence as to the identification of the appellant came several days after where the witnesses said that they knew he was the next door neighbour. The Court was of the opinion that this case cried out for a stern and serious warning especially since the Crown only relied upon on voice recognition evidence.

Accordingly, the Court was of the unanimous view that the appeal against the conviction should be allowed. The Court was of the view that the quality of the evidence of voice identification cannot improve. The Court also unanimously opined that the interest of justice will not be served in ordering a retrial insofar as the evidence that is available to Crown is tenuous. Based on the foregoing the Court allowed the appeal and directed the Director of Public Prosecutions that there be no retrial.

Case Name:

Milton Pringle

v

[1] The Honourable Molwyn Joseph

[2] The Attorney General of Antigua and Barbuda

[ANUHCVP2015/0008]

Date:

Thursday, 2nd March 2017

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:

Appellant: Mr. Justin L. Simon, QC. with him, Mr. Kwame L. Simon

Respondents: Mr. Anthony Astaphan, SC. with him, Ms. Alicia Aska

Issues:

Whether the learned trial judge erred in law in holding that

the non-receipt by the first respondent of an instrument in writing by the appellant indicated his registration as chairman of the Mount St. John's Medical Board – Whether the learned judge was wrong to find as a matter of fact that the appellant was aware that his intention to resign had been communicated to the first respondent – whether the learned judge erred in law that the appellant had abandoned his post as chairman

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

[Oral Delivery]

1. The appeal is allowed.
2. Written reasons to follow.

Case Name:

Titus G.T. Francis

v

Noreen N. Francis

[ANUHCVP2014/0032]

Date:

Thursday, 2nd March 2017

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: Dr. David Dorsett

Respondent: Mr. Rushaine Cunningham

Issues:

Civil Appeal – Application for relief from sanctions

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

Directions

Result / Order:

[Oral Delivery]

1. The notice of opposition, the skeleton arguments and the respondent's submissions filed on 17th February 2017 are deemed to be properly filed.
2. The hearing of this appeal is adjourned to the next sitting of this Court in Antigua and Barbuda during the week commencing 29th May 2017.
3. No order as to costs.

Case Name:

**Haynes Browne
v
Lena Carr, deceased
by her personal representative Buell Carr**

[ANUHCVP2014/0007]

Date:

Thursday, 2nd March 2017

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: Ms. C. Debra Burnette with her, Ms. Mandi Thomas

Respondent: Dr. David Dorsett with him, Mr. Jarid Hewlett

Issues:

**Civil Appeal – Appeal against assessment of damages –
Notes of evidence unavailable to the parties**

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

Oral Judgment or Decision

Result / Order:

[Oral Delivery]

- 1. The appeal is allowed.**
- 2. The assessment is remitted to the High Court to be dealt with based on the documents that were before the learned judge and the deponents to the affidavits are to attend court to be cross-examined unless their attendance is dispensed with in writing.**
- 3. The Registrar of the High Court is directed to list the assessment of hearing either before a judge or a master of the High Court on an expedited basis.**
- 4. Each party is to bear its own costs.**

Reason:

This is an appeal against the assessment of damages that was made by the learned judge on 30th April 2008, in circumstances where there was a default judgment. The appeal has proceeded where the notes of evidence as to what transpired at the assessment are not available to the parties. The Court has had the benefit of reading and listening to the submissions for the learned counsel for the appellant and also the benefit of having read the submissions of learned counsel for the respondent.

The Court was of the view that it is obvious that the unavailability of the notes of evidence would hamper its ability to do justice in this matter particularly since the learned trial judge made certain findings of facts in his judgment which were inconsistent with the report of Mr. Addis Workman and the learned judge has indicated that Mr. Workman then added certain material matters namely, "I cannot see what can really advantage to give the lady what she contracted to build. I also cannot understand how and experience contractor can make changes to a house being constructed without the consent of the owner. I do not know how you can remedy what is there without demolishing the whole thing. There is no way to get bedroom where they ought to be and there is no place to put the washer and the dryer." This bit of evidence for the most part is inconsistent with what Mr. Workman had said in his statement, his report and the correspondence. Accordingly, the Court was of the view that this is a matter that will require the notes of evidence as to what transpired before the judge in order for the Court to be able to determine whether or not the learned trial judge has erred.

Case Name: Antigua Commercial Bank
v
Denise Armstrong
[ANUHCVP2016/0002]

Date: Thursday, 2nd March 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:
Appellant: Ms. Kamilah Roberts
Respondent: Mr. Justin Simon, QC.

Issues: Civil Appeal – Interlocutory Appeal

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral Delivery]
The hearing of this appeal is traversed and adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda during the week commencing 29th May 2017.

Reason: The matter was adjourned due to Justice of Appeal Michel falling ill.

Case Name: Theodore Francis
v
Damon Francis

[ANUHCVAP2015/0009]

Date: Thursday, 2nd March 2017

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. Jarid Hewlett

Respondent: Mr. Jason Martin

Issues: Civil Appeal – Interlocutory appeal

**Type of Oral
Result / Order
Delivered:** Oral Judgment with Written Reasons to Follow

Result / Order: [Oral Delivery]
1. The appeal is dismissed.
2. Written reasons to follow.

Case Name: [1] Vere Bird Jr.
[2] Gaston Browne
[3] Marie Claire Hurst
[4] Lester Bird
[5] Molwyn Joseph
[6] Sharon Kentish
[7] Jim Galloway

v

The Commissioner of Police

[ANUMCRAP2010/0015]

Date: Thursday, 2nd March 2017

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:
Appellant: Mr. Anthony Astaphan with him, Ms. Rika Bird
Respondent: Mr. Anthony Armstrong, Director of Public Prosecutions

Issues: Appeal against conviction – Whether the Public Order Act of Antigua and Barbuda expressly exempts the organizing, holding, calling together or addressing of any trade union meeting.

Type of Oral Result/ Order Delivered: N/A

Result/Order: Judgment reserved.

Case Name: Dr. Jose' Humphreys
v
The Medical Council
[ANUHCVP2017/0002]

Date: Friday, 3rd March 2017

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal, [Ag.]
The Hon. Mr. Reginald Armour, SC, Justice of Appeal, [Ag.]

Appearances:
Applicant: Dr. David Dorsett with him, Mr. Jarid Hewlett

Respondent: Ms. E. Ann Henry, QC. with her, Mrs. Lisa John-Weste and Mrs. Krishna-Kay Lawrence

Issues: Application for stay of execution – Application to grant licence to practice as a general practitioner – Whether learned trial judge erred in her findings – Whether the Court of Appeal has no jurisdiction to stay the judgment – Whether this case is proper for an interim injunction or order – Whether the appellant/applicant has placed before the Court enough information as to whether there is an arguable case to entitle the appellant to register at an interim level – Whether the documents as requested by the respondent has been provided

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

Result/Order: [Oral delivery]
1. The respondent is ordered to grant a licence to the appellant to practice as a general practitioner pending the determination of his appeal or further order.
2. There will no order as to costs having regard to the fact that the appellant has enjoyed only limited success on this application and having conceded on the application for a stay.

Reason: The appellant is a medical doctor. In 2011 he satisfied the requirements to be licensed as a medical doctor in Antigua and has since practiced as a doctor up to August 2014 when his license came up for renewal. The respondent to this application, the Medical Council, requested further documents from the appellant and deferred further consideration of his application to renew his license.

The appellant brought proceedings against the Council to set aside their decision. The learned judge refused the application and the appellant appealed to this Court. Pending the hearing of his appeal, he has applied for a stay of the decision of the learned judge in the lower court and a mandatory injunction. He did not pursue the application for the stay before this Court. In regard to the mandatory injunction, the Court was guided by the principles in *National Commercial Bank Jamaica Ltd v Olint Corporation*

Ltd. (Jamaica) [2009] UKPC 16 that was referred to by counsel for the appellant which in summary is that the court is concerned to prevent irremediable harm to either party by the grant or refusal of the injunction. Applying the principles therein to the case at bar, the Court was of the view that there is no evidence of irremediable harm to the respondent. The Court noted that it is significant that there is no evidence of any complaints against the appellant in his practice since he has been practicing in Antigua. The Court was of the opinion that on the other hand, the appellant will suffer harm to both his livelihood and his reputation that may be irremediable. In the circumstances, the Court found that the balance of convenience favours the grant of a mandatory injunction that will be an interim injunction.

Case Name: **Flat Point Development Ltd.**
v
Canisby Limited
[ANUHCVP2016/0006]

Date: **Friday, 3rd March 2017**

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

Appearances:
Appellant: **Mr. Frank Walwyn with him, Ms. Jacqueline Walwyn**
Respondent: **Mr. Anthony Astaphan, QC. with him, Ms. Rika Bird**

Issues: **Civil Appeal – Foreign defendant judgment lacks jurisdiction – No in personam jurisdiction – Foreign judgment not final and conclusive – Appellant not served with notice of default judgment and could not appeal – Whether learned master erred with respect to jurisdiction**

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

N/A

Result / Order:

Judgment is reserved.