

COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS

10th – 14th October 2016

JUDGMENTS

Case Name: **Delta Petroleum (Nevis) Limited**
v
[1] OOJJ's Ltd (Doing business as OOJJ's Service Station)
[2] Othneil Hyliger

[SKBHCVAP2013/0016]

Date: **Monday, 10th October 2016**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellant: **Mr. Adrian Scantlebury holding papers for Mr. John Carrington, QC**

Respondents: **Ms. Sherry-Ann Liburd-Charles (for 2nd respondent)**
2nd respondent, Mr. Othneil Hyliger also present

Issues: **Civil appeal – Landlord and tenant – Covenant not to derogate from grant – Whether there was derogation from grant by respondent – Whether respondent's omission amounts to breach of covenant – Whether appellant entitled to terminate lease agreement on basis of breach of fundamental terms – Costs**

Result & Reason: **Held: allowing the appeal in part and ordering costs in the appeal be assessed at 1/6 of the prescribed costs in the court below, that:**

1. The covenant not to derogate from grant is

prospective in nature. While it embraces any act or omission on the part of the landlord which has the effect of rendering the premises substantially less fit for the purpose, it does not embrace acts or omissions occurring before the lease agreement was entered into. In this case, the second respondent wired the demised premises before and not after the lease was entered into. Consequently, there was no derogation from grant with respect to the pre-lease wiring and/or any continuing consequences this might have had for the tenant.

Southwark London Borough Council v Mills and others; Baxter v Camden London Borough of Council [1999] 4 All ER 449 applied; *Chartered Trust plc v Davies* [1997] 2 EGLR 83 applied; *William Old International Limited v Arya and another* [2009] EWHC 599 (Ch) at para. 36 applied.

2. In order to have validly terminated the lease agreement on the basis of there being a breach of a fundamental term of the agreement, there must have been, at the time of the purported termination, cogent evidence that conclusively established that (i) the adequate supply of electricity was in fact a fundamental term; and (ii) the second respondent failed in his duty to provide an adequate supply of electricity. In this case, the fundamental term relates to the supply of electricity to the premises, not its adequacy. Since the agreement was not discharged on the ground of a breach of the fundamental term to supply electricity or more generally a breach of the covenant not to derogate from grant, the appellant wrongfully purported to terminate the lease agreement in September 2008. Further, there was no conclusive evidence that unequivocally established that the second respondent caused the fluctuations or that he was under an obligation to rectify the wiring of the demised premises so as to make it fit for its intended purpose. The learned judge was therefore right in holding that the appellant had no legal or factual basis for the early termination of the lease agreement.
3. In relation to the entitlement to set off, since the appellant wrongfully purported to terminate the lease agreement, its obligation to pay rent continued until

December 2009. Accordingly, the learned judge was entitled to set off the sum of \$208,400.00 representing unpaid rent against the principal sum of \$486,833.84 owed to the appellant.

4. On the question of costs, rule 65.5(1)(2) of the Civil Procedure Rules 2000 provides in part that the “value” of the claim, whether or not the claim is one for a specified or unspecified sum, coupled with a claim for other remedies is to be decided in the case of the claimant or defendant – (a) by the amount agreed or ordered to be paid. In the case at bar, no money was “ordered to be paid” to the second respondent. The \$208,400.00 was an amount that was set off against the debt owed to the appellant. The learned judge therefore had no legal basis for awarding prescribed costs to the second respondent on the counterclaim, which in effect was a set off.

Rule 65.5 (1) of the Civil Procedure Rules 2000 applied; Rule 64.6 (1) of the Civil Procedure Rules 2000 considered.

APPLICATIONS AND APPEALS

Case Name:

Reginald Anthony Hull

v

**[1] The Attorney General of St. Christopher and
Nevis**

[2] The Social Security Board

[SKBHCVAP2012/0029]

Date:

Monday, 10th October 2016

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant: Mr. Garth Wilkin, with him, Mr. Damian Kelsick
(The appellant is now deceased)

Respondents: Ms. Nisharma Rattan-Mack (for the 1st respondent)
Mr. Leon Charles (for the 2nd respondent)

Issues:

Application to vary order of single judge – Whether or not a bailiff can be held personally responsible and the Crown vicariously liable for unlawful imprisonment in pursuit of the execution of an order of the magistrate to imprison a debtor – Jurisdiction of full Court to review decision of single judge – Whether order made by single judge in a procedural / interlocutory appeal reviewable by Full Court – Applicability of rule 62.16(A) and rule 62.10 of the Civil Procedure Rules 2000 (as amended by the 2011 CPR 2000 amendments) to an interlocutory appeal – Applicability of s. 10.3 of the Windward Islands and Leeward Islands (Courts) Order in Council, 1959 – Applicability of s. 5(6) of the Saint Christopher and Nevis Constitution Order 1983 – Whether warrant of committal invalid and therefore the unrest unlawful – Applicability of s. 4(5) of the Crown Proceedings Act, Cap. 5:06, Revised Laws of Saint Christopher and Nevis 2009

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

N/A

Result / Order:

Notice of discontinuance to be filed by Tuesday, 11th October 2016.

Reason:

The Court was informed that a notice of discontinuance was to be filed in the matter and that settlement negotiations are being concluded.

Case Name:

**Anne Hendricks Bass
v
[1] Director of Physical Planning**

[2] Development Advisory Committee

[SKBHCVAP2016/0004]

Date: Monday, 10th October 2016

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

Appearances:

Appellant: Mr. Damian Kelsick

Respondents: Ms. Jean M. Dyer (for both respondents)

Issues: Judicial review – Applicability of the Public Authorities Protection Act (Cap. 5:13, Revised Laws of Saint Christopher and Nevis 2009) (“PAPA”) to judicial review proceedings – Time limitation contained in s. 2(1)(a) of PAPA – Application to withdraw application for stay of interim order by single judge

Type of Oral Result/Order Delivered: N/A

Result / Order: The application is set down to Thursday.

Reason: The application might be mute since the substantive matter will be heard later today.

Case Name: Anne Hendricks Bass
v
[1] Director of Physical Planning
[2] Development Advisory Committee

[SKBHCVAP2016/0004]

Date: Monday, 10th October 2016

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

Appearances:

Appellant: Mr. Damian Kelsick

Respondents: Ms. Jean M. Dyer (for both respondents)

Issues: Judicial review – Applicability of the Public Authorities Protection Act (Cap. 5:13, Revised Laws of Saint Christopher and Nevis 2009) (“PAPA”) to judicial review proceedings – Time limitation contained in s. 2(1)(a) of PAPA

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

Result / Order: The appeal against the preliminary objection is allowed.

Reason: Judicial Review Proceedings are not caught by the Public Authorities Protection Act. Written reasons will be provided at a later date.

STATUS HEARING

Case Name: Wendell Welcome
v
The Director of Public Prosecutions

[SKBHCRAP2014/0003]

Date: Monday, 10th October 2016

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

Appearances:

Appellant: Ms. Marsha Henderson (the appellant was also present)

Respondent: Mr. Valston Graham, Director of Public Prosecutions, with him, Mr. Teshawn Vasquez, Crown Counsel

Issues: Status of matter – Appeal against conviction and sentence – Unlawful carnal knowledge

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. Leave is granted to the appellant to file and serve additional grounds of appeal within 21 days of this order;
2. Leave is granted to appellant to serve skeleton arguments on or before 28th December 2016;
3. The respondents shall file skeleton submissions in reply on or before 27th January 2017;
4. The appellant is granted leave, if necessary, to file and serve submissions in answer on or before 14th February 2017;
5. The hearing of the appeal is adjourned and traversed to the next sitting of the court in the Federation of Saint Christopher and Nevis during the week commencing 13th March 2017.

Case Name: Kennedy David Ramsey
v
Aurelie Ramsey
[SKBHCVAP2011/0024]

Date: Monday, 10th October 2016

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

Appearances:

Appellant: Mr. Nassibou Butler

Respondent: Ms. Miselle O'Brien

Issues: Status of matter – Whether decision of the learned judge unreasonable and cannot be supported having regard to evidence – Whether learned judge erred in holding that there was no good reason for setting aside judgment made in appellant's absence – Rule 39.5(3)(a) of the Civil Procedure Rules 2000 – Whether parties intend to prosecute appeal

Type of Oral Result/Order Delivered: N/A

Result / Order & Reason: Matter adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 13th March 2017 to facilitate settlement of the matter.

Case Name: Ramsbury Properties Limited
v
Ocean View Construction Limited

[SKBHCVAP2011/0020]

Date: Monday, 10th October 2016

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

Appearances:

Appellant: Ms. M. Angela Cozier

Respondent: No appearance

Issues:

Status of matter – Whether written lease agreement between appellant (as lessor) and respondent (as lessee) valid – Whether learned trial judge failed to take into account material considerations when he held that: i) the fixed term lease was not vetted by the solicitor for the respondent; ii) the premises were hot and poorly ventilated iii) the appellant had agreed to provide eating facilities for the respondent's workers – Whether learned trial judge erred when he found that appellant had repudiated contract between the parties by reneging on agreement to provide eating and laundry facilities as the property was an industrial site – Whether learned trial judge erred when he found that refitting of the building had to be done at appellant's expense – Whether learned trial judge erred when he found that appellant had disturbed respondent's quiet enjoyment of the property – Application for stay of order of learned trial judge contained in judgment dated 3rd October 2011 pending the final hearing of matter

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

Directions

Result / Order:

1. The Registrar of High Court is directed to ensure the preparation of the transcripts in the matter;
2. The matter is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis for further status hearing during the week commencing 13th March 2017.

Reason:

The transcript was not ready.

APPLICATIONS AND APPEALS

Case Name:

**Mark Brantley
v
Dwight C. Cozier**

[SKBHCVAP2014/0027]

Date:

Monday, 10th October 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

**Appellant /
Respondent:**

Ms. Dia Forrester, with her, Mr. Gyan Robinson

**Respondent /
Applicant:**

Dr. David Dorsett, with him, Ms. M. Angela Cozier

Issues:

Application (by respondent) for leave to appeal to Her Majesty in Council – Application to correct judgment

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

Oral Judgment or Decision

Result / Order:

Correction of Judgment

- 1. The application for correction of judgment to correct clerical errors on paragraphs 22, 67, and 79 is granted. In these paragraphs the word “hotel” is to be deleted and the word “building” is to be substituted;**
- 2. Costs to the applicant in the sum of \$1,000.00.**

Leave to appeal to Her Majesty in Council

- 1. Application for leave to appeal to Her Majesty in Council is dismissed (*Martinus Francois v The Attorney General* (SLUHCVAP2003/0037 (delivered 7th June 2004, unreported)) followed).**
- 2. Costs to the respondent on the application in the sum of \$2,000.00.**

Case Name: **Bridge Funding Inc**
v
[1] Carino Hamilton Development Company Ltd.
[2] Jorn Eivik

[SKBHCVAP2016/0012]

Date: **Monday, 10th October 2016**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Applicant: **Ms. Dia Forrester**
Respondents: **No appearance**

Issues: **Application for leave to appeal and stay of decision of learned judge pending determination of appeal – Default judgment – Whether learned judge erred in exercise of her discretion by setting aside default judgment granted to applicant – Whether applicant has realistic prospect of succeeding on appeal**

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

Result / Order:

- 1. Leave is granted to the applicant to serve the respondent personally with the application together with affidavits in support of the application within 7 days of this order.**
- 2. The applicant shall provide proof of service within 10 days of this order.**
- 3. The application is adjourned to the next chamber hearing scheduled for 1st November 2016 for further consideration.**

Reason: The application was served on the firm of Merchant and Associates instead of on the respondents personally.

Case Name: Resenda Browne
v
[1] Nigel Romney
[2] Lionel Patrick
[SKBHCVAP2011/0026]

Date: Monday, 10th October 2016

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

Appearances:
Appellant: Ms. Angelina Gracy Sookoo, with her, Ms. Rénal Edwards
(the appellant was also present)
Respondents: Mr. Adrian Scantlebury

Issues: Whether learned judge erred in finding that in absence of proof of damages respondents not liable in negligence –
Whether learned trial judge erred in law by referring to medical reports which were not admitted into evidence –
(By way of counter appeal) Whether learned trial judge erred in law and in fact in finding that the 1st respondent had breached duty of care owed to appellant

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

Result / Order:
1. The appeal is allowed and the decision of trial judge is set aside and matter is remitted to the High Court for assessment of damages to be done by the master;
2. Costs in the sum of \$2,000.00;

3. The counter appeal is struck out since the respondents have indicated that they will no longer pursue it.

Reason:

The learned trial judge erred in not concluding that the 1st respondent was negligent and therefore liable for the loss that the appellant suffered. The clear findings of fact by the learned trial judge at paragraphs 71 – 76 of the judgment ought to have led him to conclude that the 1st respondent was negligent. Accordingly, the learned judge clearly fell into error at paragraph 77 of the judgment when he conflated the matters of negligence with matters relating to quantum of damages (*Margaret Blackburn v James A. L. Bristol* GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) followed).

Case Name:

**Eartis Harris
v
The Director of Public Prosecutions
[SKBHCVAP2013/0010]**

Date:

Tuesday, 11th October 2016

Coram:

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

Appearances:

Appellant: Ms. Natasha Grey
Respondent: Mr. Esan Granderson, Crown Counsel

Issues:

Appeal against conviction and sentence – Indecent assault – Application for leave to amend grounds of appeal to remove ground (a) relating to whether the learned trial judge’s directions to jury on corroboration evidence were inadequate – Whether learned trial judge allowed evidence in trial which was prejudicial to appellant – Whether learned trial judge failed to give good character direction – Whether fact that appellant’s

counsel received instructions late affected appellant's right to fair trial – Whether sentence imposed on appellant unduly harsh and severe

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

Oral Judgment or Decision

Result/Order:

- 1. Leave is granted to amend the grounds of appeal referred to as (a) “whether the trial judge gave inadequate directions to the jury on corroboration evidence.”**
- 2. The Court will deliver judgment later in the week and the Registrar will notify counsel of the date. Bail will continue until the Court renders its decision.**

Case Name:

**Sandy Nisbett
v
The Director of Public Prosecutions
[SKBHCRA2012/0014]**

Date:

Tuesday, 11th October 2016

Coram:

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

Appearances:

Appellant: In person

Respondent: Mr. Teshaun Vasquez, Crown Counsel

Issues:

Appeal against sentence – Manslaughter – Application for adjournment of appeal

**Type of Oral
Result/Order**

Directions

Delivered:

Result / Order:

1. The appellant shall be legally aided in the conduct of his appeal, such lawyer to be selected by the Registrar from the roster of lawyers who may render the necessary legal aid to the appellant.
2. The hearing of the appeal is hereby adjourned to the next sitting of the court in the Federation of St. Kitts and Nevis during the week commencing the 13th March 2017. During the period of the adjournment the Crown shall take all reasonable measures to obtain the services and reports listed at items 29-32 of the record of the appeal, that is:
 - (a) Sandy Nisbett will therefore benefit from being evaluated by a forensic psychiatrist and risk assessment being done.
 - (b) Sandy Nisbett would benefit from a full Clinical Neuropsychological Evaluation inclusive of Personality testing and Intelligence testing. This should be done by a PhD Clinical Psychologist and the results made available to the Forensic Psychiatrist.
 - (c) The Forensic Psychiatrist should also receive updated reports from the social worker and psychologist, school and other academic reports and records, and medical reports, and other police reports and records should also be made available.
 - (d) Also available for interview should be corroborative sources of information such as close family members – parents and siblings – friends, employers, and community members.

Reason:

There were serious issues in relation to the Social Inquiry Report and the decision of the Court. Counsel needed more time in order to respond.

Case Name:

**[1] Exzavier Elliott
[2] Junior Stephens**

v

The Director of Public Prosecutions

**[SKBHCRAP2012/0015]
[SKBHCRAP2012/0017A]**

Date: Tuesday, 11th October 2016

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

Appearances:

Appellants: Both in person

Respondent: Mr. Valston Graham, Director of Public Prosecutions

Issues: Appeal involving Exzavier Elliot – SKBHCRAP2012/0015

Appeal against conviction and sentence – Robbery – Assault – Whether CCTV evidence was wrongfully admitted into evidence – Whether fact that appellant was interrupted during trial prevented him from having fair trial – Whether learned trial judge erred in allowing confession statement into evidence – Whether sentence imposed by learned trial judge was too harsh

Appeal involving Junior Stephens – SKBHCRAP2012/0017A

Appeal against conviction and sentence – Robbery – Assault – Whether fact that appellant was interrupted during trial prevented him from having fair trial – Whether identification evidence was poor and therefore unsafe

Type of Oral Result/Order Delivered: N/A

Result / Order: The Court will consider the matters raised by the appellants and give a decision later in the week, if not give an indication one way or the other.

Case Name: First Fidelity Deposit Corporation

v
[1] Andrew Michael Austin Titley
[2] Judith Ann Brunton Titley
[3] Caribbean Trust Company

[SKBHCVAP2015/0031]

Date: Tuesday, 11th October 2016

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

Appearances:

Appellant: Mr. Tim Prudhoe

Respondents: No appearance

Issues: Whether learned judge erred in law and misdirected herself in granting 2nd respondent stay of execution of default judgment and further, in setting aside said default judgment – Whether application to set aside default judgment properly before court – Counsel for appellant not called to Bar in Federation of St. Kitts and Nevis – Whether he can be properly heard by Court of Appeal in the circumstances

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

**Result / Order
& Reason:** The Court cannot hear the appellant as he is not called to the Bar in this jurisdiction.

Case Name: Julian Clarence Charles
v
The Director of Public Prosecutions

[SKBHCRAP2013/0015]

Date: Tuesday, 11th October 2016

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Teshawn Vasquez, Crown Counsel

Issues: Appeal against conviction and sentence – Unlawful carnal knowledge

Type of Oral Result/Order Delivered: Directions

Result / Order: Bearing in mind that the respondent has filed submissions in this matter:

1. Leave is granted to the appellant to file and serve skeleton arguments together with authorities on or before 28th December 2016;
2. Leave is granted to the Director of Public Prosecutions, if necessary, to file and serve skeleton arguments in answer on or before 31st January 2017;
3. Hearing of this appeal is adjourned and traversed to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 13th March 2017 for final adjournment.

Reason: The appellant made an application for an adjournment in order to retain counsel.

Evans Amory
v

Case Name: **The Director of Public Prosecutions**

[SKBHCRAP2012/0016A]

Date: **Tuesday, 11th October 2016**

Coram: **The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]**

Appearances:

Appellant: **In person**

Respondent: **Mr. Vaughn Henderson, Crown Counsel**

Issues: **Appeal against conviction and sentence – Indecent assault – Application for leave to amend grounds of appeal**

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

Result / Order:

- 1. Leave is granted to the appellant to amend ground 1 of his appeal to read as follows “(a) The learned judge failed to grant the appellant adequate time to prepare his defence in the matter contrary to the provisions of the Constitution of St. Christopher and Nevis; (b) The learned judge failed to adequately direct the jury on the issue of the discrepancies in the evidence at the trial; (c) The learned judge failed to properly direct the jury on the issue of corroboration in sexual offences, this appeal being related to a sexual offence committed on a child.” Ground 2 remains as it relates to the sentence being too harsh;**
- 2. Leave is granted to the appellant to file and serve submissions on or before 13th December 2016;**
- 3. Leave is granted to respondent to file and serve submissions with authorities on or before 13th January 2017;**
- 4. The hearing of this appeal is adjourned and traversed to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the**

week commencing 13th March 2017.

Reason: The appellant made an application to amend his grounds of appeal. Counsel for the respondent did not object to the application.

Case Name: Clayton Laws
V
The Director of Public Prosecutions

[SKBHCRAP2013/0001]

Jermaine Riley
V
The Director of Public Prosecutions

[SKBHCRAP2013/0002]

Ali Percival
V
The Director of Public Prosecutions

[SKBHCRAP2013/0003]

Jahmana Walters
V
The Director of Public Prosecutions

[SKBHCRAP2013/0004]

Date: Tuesday, 11th October 2016

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Humphrey Stollmeyer, Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. Jason Hamilton (for Clayton Laws)
Dr. Henry Browne, QC, with him, Mr. O’Grenville Browne
(for Ali Percival)
Mr. Hesketh Benjamin (for Jermaine Riley)
Ms. Marsha Henderson, with her, Mr. Vaughn Woodley
(for Jahmana Walters)

Respondent: Mr. Vaughn Henderson, Crown Counsel

Issues: Appeal against conviction and sentence – Kidnapping

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

Result / Order:

1. Leave is granted to all of the appellants to file and serve skeleton arguments together with authorities on or before 14th December 2016;
2. Leave is granted to the Director of Public Prosecutions to file and serve skeleton arguments together with authorities on or before 13th January 2017;
3. Leave is granted to the appellants, if necessary, to file and serve submissions in answer on or before 31st January 2017;
4. The hearing of this appeal is adjourned and traversed to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 13th March 2017.

Reason: Counsel for the appellants made an application for an adjournment. There was no objection by the respondent.

Case Name: Sylvester Merchant
v
The Director of Public Prosecutions
[SKBHCRAP2013/0014]

Date: Wednesday, 12th October 2016

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

Appearances:

Appellant: Dr. Henry Browne, QC

Respondent: Mr. Teshaun Vasquez, Crown Counsel

Issues: Appeal against conviction and sentence – Unlawful carnal knowledge

Type of Oral Result/Order Delivered: Directions

Result / Order: The Registrar is directed to ensure the completion of the transcript in this matter and the matter is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 13th March 2017.

Reason: The record of appeal had not been completed as yet.

Case Name: Razba Matthew
v
The Director of Public Prosecutions
[SKBHCRAP2011/0021]

Date: Wednesday, 12th October 2016

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

Appearances:

Appellant: Ms. Marsha Henderson, with her, Mr. Vaughn Woodley
Respondent: Mr. Valston Graham, Director of Public Prosecutions, with him, Mr. Teshaun Vasquez, Crown Counsel

Issues: Appeal against conviction and sentence – Manslaughter

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The appellant has leave to file amended grounds of appeal on or before the 31st October 2016 and file and serve submissions with authorities on or before 30th November 2016.
2. The respondent has leave to file and serve submissions with authorities in response on or before 28th December 2016.
3. The appellant has leave to file and serve submissions in reply if necessary on or before 16th January 2017.
4. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing the 13th March 2017.

Reason: Counsel for the appellant received her instructions late.

Case Name: Steadroy Scott
v
The Director of Public Prosecutions
[SKBHCRA2012/0021]

Date: Wednesday, 12th October 2016

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

Appearances:

Appellant: In person

Respondent: Mr. Valston Graham, Director of Public Prosecutions, with him, Mr. Teshawn Vasquez, Crown Counsel

Issues: Appeal against sentence – Wounding with intent – Whether 10 year sentence imposed by learned trial judge was unfair and excessive

Type of Oral Result/Order Delivered: N/A

Result / Order: Matter stood down to Thursday, 13th October 2016 at 2:00 p.m.

Reason: The matter was stood down to allow the Director of Public Prosecutions an opportunity to look at the record of appeal and to be able to respond on the issue of sentencing.

Case Name: Carl Matthew
v
The Director of Public Prosecutions

[SKBHCRAP2013/0012]

Date: Wednesday, 12th October 2016

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

Appearances:

Appellant: Ms. Natasha Grey

Respondent: Mr. Teshawn Vasquez, Crown Counsel

Issues: Appeal against conviction and sentence – Shooting with intent to cause grievous bodily harm – Application by appellant for leave to file submissions

Type of Oral Result/Order Delivered: Oral judgment or decision

Result / Order:

1. Leave is granted to the appellant to file and serve submissions with authorities on or before 15th November 2016.
2. Leave is granted to the respondent to file and serve submissions on or before 15th December 2016.
3. The appellant has leave to file and serve submissions in reply if necessary on or before the 30th January 2017.
4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 13 March 2017.

Reason: Counsel for the appellant did not have sufficient time to file her submissions after receiving the record.

Case Name: Quincy Davis
v
The Director of Public Prosecutions
[SKBHCRAP2013/0005]

Date: Wednesday, 12th October 2016

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

Appearances:
Appellant: Mr. Hesketh Benjamin

Respondent: Mr. Esan Granderson, Crown Counsel

Issues: Appeal against conviction and sentence – Unlawful carnal knowledge – Application for adjournment

Type of Oral Result/Order Delivered: Directions

Result / Order:

1. The respondent shall serve a copy of his submissions with authorities that was filed on 4th October 2016 on the appellant on or before 21st October 2016.
2. The appellant shall file and serve submissions with authorities in response on or before 15th December 2016.
3. The respondent has leave to file and serve submissions with authorities in answer on or before 16th January 2017.
4. Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing the 13th March 2017.

Reason: Counsel for the appellant received his instructions late.

Case Name:

SK Nevis Resort LLC
v
Glenford Roberts
[SKBHCVAP2016/0002]

Date: Wednesday, 12th October 2016

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

Appearances:

Appellant: Ms. Nadia Chiesa, with her, Ms. Marline Uter
Respondent: Mr. Glenford Hamilton, with him, Ms. Sharina Laws

Issues:

Interlocutory appeal against decision of learned judge dismissing appellant's application to set aside default judgment entered for specified sum – Whether default judgment irregular as claim was not for specified sum and default judgment entered pursuant to rule 12.10(1)(a) of the Civil Procedure Rules 2000

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

Oral Judgment or Decision

Result / Order:

1. The appeal is allowed to the extent that the order of the learned High Court judge in relation to the sum awarded in the default of \$80,000.00 is set aside, the default judgment stands;
2. The matter is remitted to the High Court for assessment of damages to be paid to the respondent;
3. Costs in the sum of \$750.00 to the appellant.

Reason:

Counsel for the respondent conceded that there should not have been a specified sum and the learned judge erred in entering the judgment in default for a specified sum.

Case Name:

**Nancy Vasile
v
[1] Steven Englander
[2] Fern Englander
[SKBHCVAP2015/0023]**

Date:

Wednesday, 12th October 2016

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

Appearances:
Appellant: Ms. Keisha Spence
Respondents: Mr. Dustin Delany

Issues: Whether learned master erred in holding that New York was convenient forum or clearly or distinctly a more appropriate forum for hearing of matter

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

Result / Order:
1. The appeal is dismissed.
2. Costs in the sum of \$1,000.00 to the respondent.

Reason: The learned master did not err in determining that New York was the “centre of gravity” for the trial of matter (*Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 applied; *SFC Swiss Forfeiting Company Ltd. v Swiss Forfeiting Ltd* BVIHCMAP2015/0012 (delivered 4th July 2016, unreported) followed).

Case Name: The Democrat Printing Company Limited
v
The Right Honourable Dr. Denzil Llewellyn Douglas

[SKBHCVAP2013/0026]

Date: Wednesday, 12th October 2016

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

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

Appearances:

Appellant: Mr. Jonel Powell, with him, Ms. Kimloy Walker
Respondent: Ms. Angelina Gracy Sookoo

Issues:

Whether learned master failed in her duty to examine the gravity of defamation – Whether learned master erred in holding that where a judgment in default is given the defendant is deemed to admit the truth of the allegations in the statement of claim – Whether quantum of damages was excessive

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

Oral Judgment or Decision

Result / Order:

- 1. The appeal is dismissed and the judgment of the learned trial judge who was then a master is affirmed in the assessment of damages.**
- 2. Costs agreed in the sum of \$2,500.00 for the respondent.**
- 3. The counter notice of appeal is struck out since the respondent no longer pursues this notice of application.**

Reason:

Once the default judgment was granted it was not open to the learned master at the assessment to examine whether the words complained of were defamatory. The master accordingly did not err by not so doing.

In the circumstances of this case, at the assessment hearing, where the appellant had put in no evidence challenging the evidence of the respondent as it related to the defamation, and with the respondent not having been cross-examined to test the truth of the evidence, it was open to the learned master to accept the evidence as true.

The law is settled as to when an appellate court can

properly interfere with an award of damages. The review function of the appellate court is to determine whether the exercise of the trial judge's discretion was plainly wrong having regard to the matters to be considered and the generous ambit to be accorded to the judge (*Terrence Calix v Attorney General of Trinidad and Tobago* [2013] UKPC 15 applied).

The master's award can only be disturbed where it is an entirely erroneous estimate of the damages that ought to have been awarded to the person who was defamed – *Glen Lall & National Media and Publishing Company Limited v Walter Ramsahoye* [2016] CCJ 18 (AJ) was persuasive. *Nance v British Columbia Rly Co Ltd* [1951] AC 601 applied.

The quantum of damages awarded by the learned master was clearly within the ambit of her discretion and cannot be said to be clearly wrong. The Court therefore held that there was no basis for it to interfere with the proper exercise of the learned master's discretion. *Calvin v Attorney General of Trinidad and Tobago* applied. *Glen Lall & National Media and Publishing Company Limited v Walter Ramsahoye* [2016] CCJ 18 (AJ) applied).

Case Name:

Anne Hendricks Bass

v

[1] Director of Physical Planning
[2] Development Advisory Committee

[SKBHCVAP2016/0004]

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

Appellant /

Mr. Damian Kelsick, with him, Mr. Garth Wilkin

Applicant:

Respondents: Ms. Jean M. Dyer (for the 1st and 2nd respondents)
Ms. Talibah Byron (for Caribbean Development Consultant Ltd (the Developer))

Issues: Application for leave for judicial review to be heard before a new court – Application for leave to have Developer, Caribbean Development Consultant Ltd added as respondent to proceedings

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

Directions

Result / Order:

1. The hearing of the application for leave to apply for judicial review is set for 1st November 2016 at 9:00 a.m. The Court having allowed the appeal of the preliminary applications further orders as follows: The application for leave for judicial review is remitted to the court below before a different judge on 1st November 2016 at 9:00 a.m.
2. The Developer, Caribbean Development Consultant Limited – hereafter called “The Developer” – is hereby granted leave to appear and be heard in the said matter.
3. The Developer shall file and serve submissions and authorities no later than 23rd October 2016.
4. The applicant and the respondent if necessary shall file and serve any evidence in reply on 27th October 2016, no later than 3:30 p.m.
5. The applicant and the 1st and 2nd respondents shall file and serve any further submissions by Thursday, 27th October 2016.
6. If necessary the applicant is at liberty to pursue the stay of the application until 1st November 2016.
7. Any further application shall be filed and served by the respective parties, that is, the applicant by 21st October 2016 and the 1st and 2nd respondents by 27th October 2016.
8. These costs shall be paid by the respondent. Cost of the appeal on the preliminary application to be assessed by the master unless agreed within 14 days by counsel.

Case Name: [1] Wilmot Alleyne
[2] Audrey Alleyne
v
St. Kitts, Nevis and Anguilla National Bank Ltd.

[SKBHCVAP2015/0019]

Date: Thursday, 13th October 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellants: No appearance
Respondent: No appearance

Issues: Interlocutory appeal – Sale of property – Liquidation of debt – Whether learned judge erred in ordering that new date be set for sale of property – Whether learned judge took into account irrelevant considerations in reaching decision – Whether respondent’s grounds for application for new date to sell property insufficient and unsatisfactory

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

Result / Order: The appeal, having been discontinued, is accordingly dismissed.

Reason: A notice of discontinuance was filed on 28th September 2016.

Case Name:

**Seth Foster
v
Ocean Reefs Resorts Limited**

[SKBHCVAP2016/0008]

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

Appellant: Ms. Dahlia Joseph Rowe, with her, Mr. Ricaldo Caines

Respondent: Dr. Henry Browne, QC, with him, Ms. Anmarieta Staines

Issues:

Sale of property – Contract – Whether contract of sale valid and binding on parties and remained in full force and effect – Whether learned trial judge erred in determining that appellant was not in breach of paragraphs 1, 3, 6, 9 of Schedule to consent order – Whether learned trial judge erred in holding that court is empowered to vary the settlement agreement between the parties – Whether learned trial judge erred in exercise of her discretion in granting extension of time requested by respondent – Whether learned trial judge took into consideration relevant factors exercising her discretion on whether to grant respondent extension of time – Whether learned trial judge failed to consider that parties entered into settlement agreement and subsequent consent order freely so that they ought to be held by the terms of their bargain – Whether learned trial judge erred in ordering appellant to pay costs to the respondent in sum of \$1,500.00

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

Oral Judgment or Decision

Result / Order:

- 1. The appeal is allowed.**
- 2. The judgment of the learned trial judge of 14th June**

2016 is hereby set aside in its entirety.

3. Costs are to be borne by the respondent to be assessed by the master if not agreed in 14 days.

Reason:

There was a fundamental error in the manner in which the trial was brought. The case raised issues that were not covered by rule 26.1(2)(k) of the Civil Procedure Rules 2000 (which deals with the court's case management power to extend or shorten the time for compliance with any rule, practice direction, order, or direction of the court).

The Court was also of the view that the proceedings were done in breach of the principles of natural justice.

Case Name:

Keithlyn Bergan

v

Sheryl Evans

[SKBHCVAP2014/0021]

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

Appellant: Mr. Damian Kelsick, with him, Mr. Garth Wilkin

Respondent: Ms. Angelina Gracy Sookoo instructed by Ms. Rénal Edwards

Issues:

**Interlocutory appeal – Personal injury claim –
Admissibility of expert evidence – s. 163 of the Evidence
Act, 2011 – Part 32 of the Civil Procedure Rules 2000 –
Whether learned trial judge erred in law when he ruled
that the objectives of CPR Part 32 are not interfered with
by the 'clear operation' of s. 163 of the Evidence Act,
2011 – Admissibility in civil proceedings of prior criminal**

**conviction as evidence of conduct constituting offence –
s. 91(2) of the Evidence Act, 2011**

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

Oral Judgment with Written Reasons to Follow

Result / Order:

- 1. The appeal is dismissed. Written reasons to follow.**
- 2. The appellant shall bear the cost of the appeal fixed as agreed at 2/3 of the cost awarded in the court below.**

Reason:

The Court was of the view that the issues raised could benefit from some written guidelines and accordingly written reasons will follow.

Case Name:

**Eartis Harris
v
The Director of Public Prosecutions
[SKBHCVAP2013/0010]**

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

Appellant: Ms. Natasha Grey

Respondent: Mr. Esan Granderson, Crown Counsel

Issues:

Appeal against conviction and sentence – Indecent assault – Application for leave to amend grounds of appeal to remove ground (a) relating to whether the learned trial judge’s directions to jury on corroboration evidence were inadequate – Whether learned trial judge allowed evidence in trial which was prejudicial to appellant – Whether learned trial judge failed to give good character direction – Whether fact that appellant’s

counsel received instructions late affected appellant's right to fair trial – Whether sentence imposed on appellant unduly harsh and severe

Type of Oral
Result/Order
Delivered:

Oral Judgment or Decision

Result / Order:

1. The 1st ground is dismissed.
2. The 2nd and 3rd grounds are dismissed.
3. The appeal against sentence is allowed. The sentence of the learned trial judge of 2 years, 2 years and 4 years to run consecutively is set aside and replaced with a sentence of 5 years on each count of indecent assault, to run concurrently.

Reason:

Although the Court was of the view that the learned trial judge ought not to have allowed evidence that was not part of the charge to become part of the trial, the Court held that this was not fatal. In the circumstances, there was no prejudice to the appellant; the virtual complainant was merely telling the story of the offence that took place.

The appellant had no previous convictions and was entitled to a good character direction (*Mark Teeluck, Jason Ellis John v The State* [2005] UKPC 14 applied). When the defendant is of good character he is entitled to a good character direction tailored to fit the circumstances of the case. However, if it is omitted it would not be rare for the Court of Appeal to say that this did not affect the appellant's case. Where credibility is in issue it is always relevant. The defendant's good character must be elicited by his counsel and it is necessary for it to be raised in the defence. The learned trial judge has no duty to raise it (*Kizza Sealey, Marvin Headley v The State* [2002] UKPC 52 applied). However, applying the authority *Uriah Browne v The Queen* [2005] UKPC 18, the Court held that having regard to the eyewitness evidence and the poor alibi evidence of the appellant, and being of the view that the jury would have properly convicted even if they had been given a good character direction, this case was an appropriate one to apply the proviso. Additionally, there was no factual

basis that failure of counsel to raise good character evidence was due to his incompetence or negligence. Accordingly, this ground of appeal was dismissed.

The Court was of the view that (at page 196 of the transcript) the appellant was curtailed by the trial judge and also, that he was prevented from raising his mitigating factors (at page 197 of the transcript). This was taken into account, as well as the fact that appellant had no previous convictions and that it seemed as though no consideration had been given to the Social Inquiry Report. The Court noted, however, that the sentences of 2, 2 and 4 years imposed by the learned trial judge were lenient.

Case Name:

**[1] Exzavier Elliott
[2] Junior Stephens**

v

The Director of Public Prosecutions

**[SKBHCRAP2012/0015]
[SKBHCRAP2012/0017A]**

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

Appellant: Both in person

Respondent: Mr. Valston Graham, Director of Public Prosecutions

Issues:

Appeal involving Exzavier Elliot – SKBHCRAP2012/0015

Appeal against conviction and sentence – Robbery – Assault – Whether CCTV evidence was wrongfully admitted into evidence – Whether fact that appellant was interrupted during trial prevented him from having fair

trial – Whether learned trial judge erred in allowing confession statement into evidence – Whether sentence imposed by learned trial judge was too harsh

Appeal involving Junior Stephens –
SKBHCRAP2012/0017A

Appeal against conviction and sentence – Robbery – Assault – Whether fact that appellant was interrupted during trial prevented him from having fair trial – Whether identification evidence was poor and therefore unsafe

Type of Oral
Result/Order
Delivered:

Oral Judgment or Decision

Result / Order:

1. Appeal against conviction and sentence dismissed and sentence is affirmed for Exzavier Elliott.
2. Appeal against conviction and sentence of the appellant Junior Stephens is dismissed and sentence is affirmed.

Reason:

The Court held that a trial judge must exercise a certain latitude in allowing unrepresented persons to ask questions. He must also manage the trial. Bearing this in mind, it was the Court's view that the learned judge's interruption went too far in the appellant's cross-examination of PC Monique Norford. The appellant Junior Stephens asked PC Norford whether the bag had any distinctive marks. The learned trial judge interrupted. He later allowed PC Norford to answer and then said she said the bag had "JanSport" on it. This Court was of the view that this was not a distinctive mark but rather, a name brand. Junior Stephens also cross-examined PC Norford on the scars that appeared on the face of the person seen on the CCTV and put to her that the scars did not reflect any scars on his face and asked that the jurors come closer to him to see whether he had any scars.

The Court was of the view that the interruptions were not sufficient to render the trial unsafe. Ground 1 of the appeal was dismissed for both appellants. PC Norford indicated in evidence that there were 2 scars: one by

right side of the nose, one by the left eye. In cross-examination she could only see the scar on the right side of nose but not the one on left eye. This was good evidence and the jurors would have heard this. Accordingly, this ground was also dismissed and so too the appeal of Junior Stephens.

Although the Court was of the view that the learned trial judge did not do anything improper with the statement given by the appellant Exzavier Elliott, the Court takes issue with the procedure adopted for the admission of the statement. The learned trial judge was right to have a voir dire (*Ajodha v The State* [1982] AC 204 applied). However, the learned trial judge erred when he told Exzavier Elliott to come to the witness box, where he gave evidence. The two police officers who took the statement gave evidence and confirmed that the appellant gave the evidence voluntarily. However, this placed the burden of proving the voluntariness of the statement on the appellant which was not proper. The Court was of the view that there was an abundance of evidence to find that the statement was made voluntarily.

Notwithstanding, however, that the incorrect procedure was used by the trial judge in taking the statement, this would not have vitiated the conviction of Exzavier Elliott. The Court was satisfied that there was no basis to vary the appellant's sentence. There were prior convictions by the appellant for similar offences and he showed no sign of remorse. In the circumstances, this Court could find no basis to interfere with the sentence imposed by the learned trial judge.

CASE MANAGEMENT

Case Name:

Adam Bilzerian

v

Kevin Horstwood

[SKBHCVAP2015/0028]

Date:	Thursday, 13th October 2016	
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal	
Appearances:		
	Appellant / Applicant:	No appearance
	Respondent:	In person
Issues:	Appeal against decision of learned judge denying appellant's application for declaration of contempt against respondent – Application to have written reasons of the High Court for order dated 2nd October 2015	
Type of Oral Result/Order Delivered:	Directions	
Result / Order:	1. The Court proposes to deal with this application on 3rd November 2016. 2. The Court directs that any affidavit evidence be filed by 21st October 2016 as well as any written submissions. The application by Adam Bilzerian for written reasons of the decision of the court below made on 2nd October 2015 shall be heard on paper on 3rd November 2016. 3. The respondent Kevin Horstwood is at liberty to file and serve affidavit evidence and written submissions in response to the application by Friday, 21st October 2016 at 3.30 p.m. 4. The applicant Adam Bilzerian is at liberty to file and serve evidence in reply and reply submissions if any by Thursday, 27th October 2016. 5. No further applications or evidence shall be filed in this matter without the court's permission.	

Case Name:

Kevin Andrew Horstwood

v

Adam Bilzerian

[SKBHCVAP2016/0003]

Date:

Thursday, 13th October 2016

Coram:

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

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Terence Byron

Respondent: No appearance

Issues:

2nd application by respondent to dismiss appeal – Application by respondent to strike out the appellant's affidavit in opposition to the 2nd application to dismiss appeal – Application by respondent for enlargement of time for filing additional documents – Application to strike appellant's bundle of documents

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

Directions

Result/Order:

- 1. The second application to dismiss the appeal shall be heard first.**
- 2. The applicant Adam Bilzerian shall file and serve a list of the documents together with copies of authorities to which this application relates for inclusion in the appeal record no later than Friday, 21st October 2016 at 3.30 pm.**
- 3. The appellant shall file and serve written submissions on all 4 procedural applications no later than 21st October 2016 at 3.30 p.m.**
- 4. The respondent Adam Bilzerian shall be at liberty to file and serve reply submission in respect of all 4 applications by Thursday, 27th October 2016 at 3.30 pm.**
- 5. No further applications or evidence shall be filed in relation to these applications without the permission**

of the Court.

Case Name: Caribbean Building Systems (St. Kitts) Ltd
v
[1] Colin Parry
[2] First Caribbean International Bank (Barbados)
Limited

[SKBHCVAP2014/0025]

Date: Thursday, 13th October 2016

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Unrepresented
Respondents: Ms. Camilla Cato (for the 1st respondent)
Mr. J. Emile Ferdinand, QC, with him, Mr. Garth Wilkin (for
the 2nd respondent) (Mr. Peter Irish, representative of the
Bank, was also present)

Issues: Jurisdiction – Appeal against order of learned master
directing non-party to file and serve amended defence on
behalf of appellant notwithstanding existence of
injunction prohibiting said non-party from ‘in any way
interfering in the running of or the affairs of’ the appellant
Whether learned master had jurisdiction to make order

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

Result / Order: 1. The Court takes a note of para. 10 of the applicant’s
submission pointed out by Learned Queen’s Counsel
as it relates to Mr. Horstwood standing to represent
Caribbean Building Systems.

2. The appeal will come on for hearing following the outcome of Appeal No. 3 of 2016 Kevin Horstwood v Adam Bilzerian.

Case Name: **Caribbean Building Systems (St. Kitts) Ltd**
v
[1] Simon Briggs
[2] First Caribbean International Bank (Barbados)
Limited

[SKBHCVAP2014/0026]

Date: **Thursday, 13th October 2016**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: **No appearance**

Respondents: **Mr. J. Emile Ferdinand, QC (for the 2nd respondent)**

Issues: **Jurisdiction – Appeal against order of learned master directing non-party to file and serve amended defence on behalf of appellant notwithstanding existence of injunction prohibiting said non-party from ‘in any way interfering in the running of or the affairs of’ the appellant Whether learned master had jurisdiction to make order**

Type of Oral
Result/Order
Delivered:

Directions

Result / Order:

1. The 2nd respondent asked the Court to look at para. 10 of the submissions of the appellant filed 4th February 2015 which was stated in broad terms as it relates to Mr. Horstwood standing as it relates to Caribbean Building Systems.

2. This appeal will come on for hearing following the outcome of Civil Appeal No. 3 of 2016 Kevin Horstwood v Adam Bilzerian.

Case Name:

**Adam Bilzerian
v
[1] Zachary Getz
[2] St Christopher Club Condominiums
[3] St Christopher Club Condominiums
Homeowners Association**

[SKBHCVAP2016/0006]

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

Appellant: No appearance

**Respondents: Ms. Miselle O'Brien (for the 1st and 3rd respondents)
No appearance on behalf of the 2nd respondent
(unrepresented)**

Issues:

**Application to strike respondent's notice of opposition –
Application in opposition to application to strike
respondent's notice of opposition**

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

Directions

Result / Order:

- 1. The procedural application to strike the notice of opposition will be heard on paper on 3rd November 2016. The 1st and 3rd respondents may file and serve submissions in respect of the substantive appeal no later than Friday, 21st October 2016 at 3.30 p.m.**

2. The appellant shall be at liberty to reply.
3. The appellant shall file and serve reply submissions by Friday, 4th November 2016 at 3.30 p.m.
4. There shall be no further applications or further evidence without the leave of the Court.

Case Name:

**[1] Kevin Andrew Horstwood
[2] Exclusive Hotels Limited
v
[1] First Caribbean Bank International [Barbados]
Limited
[2] Belmont Resorts Limited
[3] The Registrar of the High Court
[4] Attorney General of the Federation of St Kitts
and Nevis
[5] Kate Walwyn
[6] Lemon Grove Company Limited
[SKBHCVAP2016/0013]**

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

**Appellants /
Applicants: Mr. Terence Byron**

Respondents: No appearance

Issues:

Application for leave to appeal against order of learned judge dismissing applicants' application to be joined as interested parties in claim and ordering that applicants pay costs to respondents – Application for extension of time to apply for leave to appeal

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

Oral Judgment or Decision

Result / Order:

1. Leave to appeal is hereby granted.
2. The applicants shall withdraw by Monday, 17th October 2016 the application made for leave to appeal in the court below.
3. The notice of appeal is to be filed in accordance with Part 62 of Civil Procedure Rules.

Reason:

The Court considered that there was an arguable case on the issue of the costs awarded by the learned judge and therefore granted the applicants leave to appeal costs in accordance with Part 62.

Case Name:

**Adam Bilzerian
v
[1] Gerald Lou Weiner
[2] Kathleen Ann Weiner

[SKBHCVAP2015/0015]**

Date:

Thursday, 13th October 2016

Coram:

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

Appearances:

Appellant: Unrepresented

Respondents: Ms. Jean Dyer

Issues:

Application to reinstate Court of Appeal decision given in interlocutory appeal on 27th January 2016 – Application to strike affidavit in opposition to application to reinstate

Type of Oral

Directions

**Result/Order
Delivered:**

Result / Order:

1. In relation to the affidavit to reinstate, the Court will not permit the affidavit of Paul Bilzerian, which the court finds very disrespectful. He is given a choice to withdraw or be found in contempt.
2. Affidavit is withdrawn and stricken from the record as being scandalous and contemptuous of the court.
3. The procedural applications that is the application to reinstate and affidavit to strike the application will be heard by the Court on paper on 3rd November 2016.
4. In relation to this matter there shall be no further application or evidence without the permission of the Court.
5. The respondent shall file and serve submissions and affidavit evidence by 21st October 2016 at 3.30 p.m. and thereafter there shall be no further application or evidence save that the applicant is at liberty to file and serve submissions in reply by 27th October 2016 at 3.30 p.m.

APPLICATIONS AND APPEALS

Case Name:

Calvin Prentice

v

[1] Jamie Wilkinson

[2] Deon & Associates

[SKBHCVAP2016/0010]

Date:

Thursday, 13th October 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Felicia Johnson

Respondent: Mr. Terence Byron

Issues: Interlocutory appeal – Default judgment – Whether learned master erred in holding that there were exceptional circumstances which justified setting aside default judgment obtained by appellant – Whether learned master erred in interpreting and applying rules 12.9(2) and 13.3(2) of the Civil Procedure Rules 2000 – Application (by 2nd respondent) to have time extended pursuant of rule 26.2(k) of the Civil Procedure Rules 2000 to file notice of opposition to notice of appeal and to file written submissions and counter-notice of appeal – Application for adjournment

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

Directions

Result / Order:

1. The respondent is to file and serve submissions in support of the application filed on 13th October 2016 for extension of time to defend or prosecute appeal on or before the 31st October 2016;
2. The appellant is to file and serve submissions and authorities in response on or before 30th November 2016;
3. The hearing to this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 13th March 2017;
4. Costs of the application to the appellant in the sum of \$1,000.00.

Reason:

Counsel for the respondent made an application to adjourn the hearing of application filed on 13th October 2016. The appellant objected to this application for an adjournment.

Case Name:

**Sankofa Maccabee
v**

The Chief of Police

[SKBMCRAP2015/0007]

Date: Thursday, 13th October 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

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

Respondent: Mr. Esan Granderson, Crown Counsel

Issues: Appeal against conviction and sentence – Possession of cannabis – Possession of cannabis with intent to supply – Cultivation of cannabis – Whether learned judge’s decision unreasonable or cannot be supported having regard to evidence – Whether sentence imposed unduly severe – Inconsistencies in evidence before learned magistrate – Whether learned magistrate failed to take appellant’s good character into consideration during trial – Handling of evidence by police

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

Directions

Result / Order:

1. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St. Christopher and Nevis during the week commencing 13th March 2017;
2. Leave is granted to the appellant to file and serve amended submissions in support of the appeal within 2 months of today’s date;
3. Leave is granted to the respondent to file and serve supplemental submissions within 1 month of service of the appellant’s amended submissions;
4. Leave is granted to the appellant to file submissions in reply to the respondent’s supplemental submissions within 1 month of service thereof.

Reason: Counsel for the appellant made an application for an adjournment. There was no objection from counsel for the respondent.

Case Name: Thuan Audain
v
The Chief of Police
[SKBMCRAP2015/0001]

Date: Thursday, 13th October 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Chesley Hamilton, with him, Ms. Marsha Henderson
Respondent: Mr. Vaughan Henderson, Crown Counsel

Issues: Appeal against conviction and sentence – Possession of firearm and ammunition – Whether the learned magistrate erred and misdirected himself on facts and law – Whether sentence imposed on appellant too harsh – Time spent on remand not taken into account

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

Result / Order:

1. The appeal against conviction is dismissed.
2. The appeal against sentence is allowed to the extent that the period of 5 months is deducted from the sentence of 2 years and 7 months imposed by the magistrate.

Case Name:

**Ellia Jeffers
v
The Chief of Police**

[SKBMCRAP2015/0015]

Date:

Thursday, 13th October 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Marsha Henderson

Respondent: Mr. Valston Graham, Director of Public Prosecutions

Issues:

Appeal against conviction and sentence – Importation of cocaine – Appellant fined sum of EC\$65,000.00 to be paid forthwith in default 4 years imprisonment – Whether legal evidence substantially affecting merits of case rejected by court – Whether decision unreasonable or cannot be supported having regard to evidence – Whether decision erroneous on point of law – Whether sentence passed based on wrong principle or was such that magistrate viewing the circumstances reasonably could not properly have so decided – Whether sentence imposed was unduly severe

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

Directions

Result / Order:

- 1. The appellant shall file and serve written submissions in support of appeal within 2 months of this order.**
- 2. The respondent shall file and serve written submissions in response within 1 month of service of the appellant's submissions.**
- 3. Leave is granted to the appellant to file submissions in reply if necessary within 1 month of service of the respondent's submissions.**
- 4. The hearing of the appeal is adjourned to the next**

sitting of the Court of Appeal in the Federation of St Kitts and Nevis during the week commencing 13th March 2017.

Reason: Counsel for the appellant made an application for an adjournment.

Case Name: [1] Zambo Heath
[2] Marlon Heath
[3] Joycelyn Ishackey Hodge
v
Chief of Police
[SKBMCRAP2014/0015]
[SKBMCRAP2014/0016]
[SKBMCRAP2014/0014]

Date: Thursday, 13th October 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellants: Ms. Marsha Henderson holding papers for Mr. Anthony Johnson
Respondent: Mr. Valston Graham, Director of Public Prosecutions

Issues: Appeals against conviction and sentence – Possession of controlled drug – Possession of controlled drug with intent to supply – Whether decision of learned magistrate unreasonable and cannot be supported having regard to evidence – Whether judgments passed based on wrong principle and were such that a magistrate viewing the circumstances reasonably could not properly have reached those decisions – Whether the analyst certificate was improperly admitted as evidence

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

Directions

Result / Order:

1. The appellants shall file and serve written submissions in support of this appeal within 2 months of today's date.
2. The respondent shall file and serve written submissions in response within 1 month of service of the appellants' submissions.
3. Leave is granted to the appellants to file submissions in reply if necessary within 1 month of service of the respondents submissions.
4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of St Kitts and Nevis during the week commencing 13th March 2017.

Case Name:

**Hitesh Chandwani
v
Chief of Police**

[SKBMCRAP2014/0021]

Date:

Thursday, 13th October 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Marsha Henderson holding papers for Mr. Anthony Johnson

Respondent: Mr. Esan Granderson, Crown Counsel

Issues:

Appeal against conviction and sentence – Wilful exposure of person – Whether decision of learned magistrate unreasonable and cannot be supported having regard to evidence – Whether decision erroneous on point of law – Whether sentence imposed unduly

severe – Application for leave to withdraw notice of appeal

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

Oral Judgment or Decision

Result / Order:

- 1. Leave is granted to the appellant to withdraw the notice of appeal.**
- 2. The appeal, having been withdrawn, is accordingly dismissed.**

Reason:

Counsel for the appellant made an application to withdraw the notice of appeal.

Case Name:

Steven Berkeley

v

Cable & Wireless

[SKBMCVAP2014/0006]

Date:

Thursday, 13th October 2016

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Ms. Felicia Johnson

Issues:

Civil appeal – Appellant’s whereabouts unknown

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

Oral Judgment or Decision

Result / Order: The notice of appeal in this matter having been filed since June 2014, the appeal is struck out for want of prosecution.

Reason: The appellant could not be located.

Case Name: Steadroy Scott
v
The Director of Public Prosecutions
[SKBHCRAP2012/0021]

Date: Thursday, 13th October 2016

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. Teshaun Vasquez, Crown Counsel

Issues: Appeal against sentence – Wounding with intent –
Whether 10 year sentence imposed by learned trial judge
was unfair and excessive

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

Result / Order: The appeal against sentence is allowed to the extent that
the sentence of 10 years is reduced to 9 years with time
on remand to be deducted from the sentence.

Reason: The Court was of the opinion that a 10 year sentence was
too harsh.

