

COURT OF APPEAL SITTING

ANGUILLA
2nd – 6th December 2013

STATUS HEARING

Case Name: Lolita Davis-Richardson
v
Christopher Cutler
[AXAHCVAP2005/0005]

Date: Monday, 2nd December 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Merline Barrett, instructed by Keithley Lake & Associates

Issues: Status of matter – Property – Equitable remedy of specific performance – Whether learned judge erred in granting respondent relief which was different from that prayed for in statement of claim – Default judgment – Costs

Result /Order [Oral delivery]
1. Status hearing of this matter is adjourned to the next sitting of the Court of Appeal scheduled for the week commencing 23rd June 2014.
2. Notice of the date of the hearing to be served by the court on the appellant.

Reason: Notice of this status hearing (dated 15th November

2013) was served on the appellant on 20th November 2013. The said notice gave the appellant 30 days to indicate whether she intended to proceed with the appeal. However, 30 days had not yet passed by the time the matter came up for hearing. It had been listed prematurely.

Case Name: Lolita Davis-Richardson
V
[1] Wilmouth Richardson
[2] Cislyn Richardson
[AXAHCVAP2009/0003]

Date: Monday, 2nd December 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant: No appearance

Respondents: Ms. Eustella Fontaine, with her, Ms. Keisha Hiles instructed by Caribbean Associated Attorneys (The 1st respondent, who was also present, was representing the 2nd respondent)

Issues: Status of matter – Sale of land – Whether learned judge erred in finding that Anguilla Land Form was complete record of contract of sale for property – Whether learned judge came to wrong conclusion on evidence before her

Result / Order: [Oral delivery]
1. Status hearing of this matter is adjourned to the next sitting of the Court of Appeal scheduled for the week commencing 23rd June 2014.

2. Notice of the date of the hearing to be served by the court on the appellant.

Reason: Notice of this status hearing (dated 15th November 2013) was served on the appellant on 20th November 2013. The said notice gave the appellant 30 days to indicate whether she intended to proceed with the appeal. However, 30 days had not yet passed by the time the matter came up for hearing. It had been listed prematurely.

APPLICATIONS AND APPEALS

Case Name: Daniel Connor
v
The Commissioner of Police
[AXAMCRAP2011/0002]

Date: Monday, 2nd December 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Ms. Tara Carter, with her, Ms. Kristy Richardson, instructed by Caribbean Juris Chambers
Respondent:	Ms. Erica Edwards of the Attorney General's Chambers

Issues: Appeal against sentence – Theft – Joint application for adjournment of hearing

Result / Order: [Oral delivery]

Adjournment granted to next sitting of the Court of Appeal scheduled for the week of 23rd June 2014.

Reason: No submissions had been filed as yet in this matter.

Case Name: **Brandon Romney**
v
Regina

[AXAHCRA2011/0001]

Date: Monday, 2nd December 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]

Appearances:

Appellant:	In person
Respondent:	Ms. Erica Edwards of the Attorney General's Chambers

Issues: Appeal against conviction – Murder

Result / Order: [Oral delivery]
The court accedes to the request of the appellant; the appeal is hereby withdrawn.

Reason: The appellant informed the Court that he did not wish to proceed with the appeal. Upon the Court inquiring as to whether he had counsel, the appellant informed the Court that his lawyer was Mr. Bourne, the same lawyer who had represented him at trial.

The Court was then informed (by Ms. Merline Barrett) that a note had just been received from Mr. Bourne,

which stated that he had spoken to the appellant and that the appellant will not be proceeding with the appeal.

Case Name:

Lyndon Duncan

v

Edison Baird

[AXAHCVAP2012/0008]

Date:

Monday, 2nd December 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Dane Hamilton, QC, with him, Ms. Josephine Gumbs-Connor and Ms. Yanique Stewart

Respondent:

Ms. Tara Ruan, with her, Ms. Kristy Richardson, instructed by Caribbean Juris Chambers

Issues:

Defamation – Fair comment – Qualified privilege – Whether words complained of fell within category of what can reasonably be considered as comment – Whether appellant had legal, social or moral duty to make impugned statement – Whether damages awarded were excessive – Whether basis upon which damages were awarded were pleaded or formed part of evidence at trial

Result / Order:

Decision reserved. Parties will be notified of the delivery in due course.

Case Name:

**Hallman Holding Limited
v
[1] James Ronald Webster
[2] Cleopatra Leola Webster**

[AXAHCVAP2013/0002]

Date:

Tuesday, 3rd December 2013

Coram:

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

Appearances:

Appellant:

Mr. William Hare (instructed by Alex Richardson & Associates)

Respondents:

Ms. Joyce Kentish-Egan, with her, Ms. Tara Carter and Mr. Kerith Kentish (instructed by Joyce Kentish & Associates)

Issues:

Contract – Property – Agreement containing clause which granted appellant option to purchase property – Correct construction of agreement – Judgment registered against land by third party – Whether respondents in breach of implied term of contract by allowing registration of judgment against land by third party – Summary judgment – Whether learned master erred in refusing to grant appellant summary judgment – Whether agreement between parties could be construed at this stage

Result / Order:

[Oral delivery]

- 1. The appeal is dismissed.**
- 2. The appellant shall bear the costs of this appeal fixed at two-thirds of the costs assessed on the application in the court below.**

Reason:

Having heard the arguments and considered the respective pleadings of the parties, as well as the evidence produced, the Court was of the view that the learned master was quite correct to conclude

that this case was not one suited for summary judgment.

Furthermore, the Court endorsed the well settled principle which was stated by the learned master at paragraph 28 of her judgment:

“Summary judgment applications have to be kept within their proper role. They are not to dispense with the need for a trial where there are issues which should be considered at trial. In other words, such applications should not be mini-trials.”

The Court held that this was precisely what the appellant was inviting it to do, that is, to conduct a mini-trial on the issues in the case.

The issues pleaded raised questions of the proper construction of the agreement; the question of whether terms are to be implied; the question whether, on the assumption that terms are to be implied, there was a breach of those terms; whether there has been a grant and/or exercise of the option purportedly provided for in the agreement. These were all matters which could not be resolved by a summary judgment process.

The Court opined that it should be borne in mind that Part 15 of the Civil Procedure Rules 2000 (which deals with Summary Judgment) is not in mandatory terms; it gives a judge or master a discretion in terms of whether to grant summary judgment or not, having regard to all the circumstances of the case. There was nothing put forward by the appellant to show that the master erred in the exercise of her discretion. The Court therefore held that there was no reason why it should disturb the decision reached by the learned master, to refuse to grant summary judgment to the appellant.

Case Name:

Brilla Capital Investment Master Fund SPC

**Limited (for and on behalf of Brilla Cap
Juluca Segregated Portfolio M, a segregated
portfolio thereof)**

v

[1] Registrar of Companies

**[2] Leeward Isles Resorts Limited (in
liquidation)**

**[3] Maundays Bay Management Limited (in
liquidation)**

[4] William Tacon & Stuart Mackellar

**[5] Charles Hickox, Linda Hickox & Cap
Juluca L&C Limited**

[High Court Civil Appeal No. 2 of 2012]

Date: Wednesday, 4th December 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]

Appearances:

**Appellant /
Respondent:** Mr. Robert Levy, QC, with him, Mr. Ravi
Bahadursingh (instructed by Alex Richardson &
Associates)

**Respondents /
Respondents:** Ms. Mary Clare Haskins (instructed by the Attorney
General's Chambers) for the 1st respondent
Ms. Dahlia Joseph, with her, Ms. Dia Forrester
(instructed by Daniel, Brantley & Associates) for the
2nd & 3rd respondents

**5th Respondents /
Applicants:** Ms. Joyce Kentish-Egan, with her, Mr. Kerith Kentish
(instructed by Joyce Kentish & Associates)

Issues: Leave to appeal to Her Majesty in Council – Sale of
assets by private treaty – Joint liquidators obliged to
obtain best price for assets for benefit of unsecured
creditors – Failure of judge to give reasons for
granting joint liquidators permission to sell real
property to fifth respondents and thereby accept
lower bid in face of higher bid being on the table at

time of acceptance of lower bid – Procedural irregularity – Whether bidding process unclear, arbitrary, unreasonable and misunderstood by parties

Result / Order:

[Oral Delivery]

Upon the applicants, by their counsel, undertaking to prosecute the appeal with due diligence and in accordance with the conditions imposed by this Court and to apply for an expedited hearing of the appeal:

(1) Leave to appeal to Her Majesty in Council is hereby granted upon condition that the appellants/applicants within 60 days of today's date do enter into good and sufficient security to the satisfaction of the court in the sum of £500 sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicants in the event of it not obtaining an order granting final leave to appeal or, of the appeal being dismissed for non-prosecution or, of the Judicial Committee ordering the appellants to pay the costs of the appeal. The security of £500 is to consist of a deposit of the said amount to the court office.

(2) Within 60 days of today's date, the appellants/applicants do take the necessary steps for the purposes of procuring the preparation of the records, the settling of such records with the solicitors for the respondents and the certification of the records by the Registrar of the Court of Appeal.

(3) The record shall be prepared in accordance with Rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and its practice direction 5, and shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.

(4) Within 81 days of this order the appellants/applicants shall make an application to the court for final permission to appeal to Her

Majesty in Council supported by the certification of the Registrar that the deposit has been given.

(5) The costs of the application for conditional leave to appeal be costs in the appeal.

Case Name:

[1] Brilla Capital Investment Master Fund SPC Limited

(A Cayman Islands segregated portfolio company, for and on behalf of Brilla Cap Juluca Segregated Portfolio M, a segregated portfolio thereof)

[2] Anguilla Hotel Investors II Limited

[3] Bridge Funding Limited

Applicants

v

[1] John Greenwood

(Acting as Liquidator appointed to Leeward Isles Resorts Limited (In Liquidation) by Order dated 4th May 2012)

[2] Leeward Isles Resorts Limited (In Liquidation)

[3] Cap Juluca L&C Limited

[4] Cap Juluca L&C Properties Ltd

[5] Charles & Linda Hickox

[6] Anguilla Social Security Board

Respondents

[AXAHCVAP No. 7 of 2013]

Date:

Wednesday, 4th December 2013

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]**

Appearances:

Applicants: Mr. Robert Levy, QC

Respondents: Ms. Dahlia Joseph, with her, Ms. Dia Forrester (instructed by Daniel, Brantley & Associates) for the 1st and 2nd respondents
 Ms. Joyce Kentish-Egan, with her, Mr. Kerith Kentish (instructed by Joyce Kentish & Associates) for the 3rd, 4th and 5th respondents
 Mr. Alex Richardson for the 6th respondent

Issues: Application for leave to appeal – Whether learned master erred in refusing applicant’s application for directions and/or removal of liquidators

Result / Order: [Oral Delivery]
 The applicants are granted leave to appeal the judgment and order of the Honourable Master Lanns handed down on 2nd October 2013.

Reason: The Court was satisfied that leave to appeal should have been granted in this matter, the relevant threshold having been met.

Case Name: Patricia Yvette Harding
 v
 The Attorney General of Anguilla
 [AXAHCVAP2013/0003]

Date: Wednesday, 4th December 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
 The Hon. Mr. Mario Michel, Justice of Appeal
 The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
 [Ag.]

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Ivor Greene, with him, Ms. Erica Edwards and Ms. Mary Clare Haskins of the Attorney General's Chambers

Issues: Dismissal – Whether learned trial judge misdirected himself and therefore erred in law in arriving at conclusion that the appellant's term of office came to an end by effluxion of time – Whether learned trial judge's finding that appellant was not removed from office by his application of purely contractual considerations is contrary to law – Whether learned trial judge misdirected himself on principles of legitimate expectation which renders his findings therein deeply flawed – Whether learned trial judge erred in failing to accept that "New Policy Consideration" by executive was ploy to control holders of public office – Bias – Failure by learned trial judge to give reasons on which he premised his award of prescribed costs against appellant

Result / Order: Judgment reserved.

Case Name: Westburg Anstalt
v
Profitstar Anstalt

[BVIHCMAP2013/0020]

Date: Thursday, 5th December 2013

Coram: The Hon. Dame Janice Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Tyrone Chong, QC, Justice of Appeal
[Ag.]

Appearances:
Appellant: Mr. Vernon Flynn, QC, with him, Mr. Jeremy Child (instructed by Harney Westwood & Riegels)

Issues:

Interlocutory appeal – Enforcement of final and conclusive foreign monetary judgment within jurisdiction – Service of claim form out of jurisdiction for that purpose – Permission to serve out refused by learned judge – Rule 7.3(5) of the Civil Procedure Rules 2000 (as amended) – Reciprocal Enforcement of Judgments Act, Cap. 65 – Whether learned judge erred in construing CPR 7.3(5)(b) – Whether purposive construction should have been applied to CPR 7.3(5)(b)

Result / Order:

[Oral delivery with written reasons to follow]

- 1. The court is satisfied that the appeal should be allowed and it is accordingly allowed, and that rule 7.3(5) of the Civil Procedure Rules 2000 should be read as:**

“A claim form may be served out of the jurisdiction if a claim is made to enforce any judgment or arbitral award which was made –

(a) ...

(b) by a foreign court or tribunal and amenable to be enforced at common law”

so as to give effect and purpose to what the intent was behind the addition of subparagraph (b) to CPR 7.3(5).

- 2. The court accordingly will grant leave for the claim form to be served out of the jurisdiction on the defendant Profitstar Anstalt in the terms of the draft order which was submitted to the court below, filed on the 12th of September 2013.**
- 3. The costs of this appeal are reserved.**