

COURT OF APPEAL SITTING

**ANGUILLA
5th – 6th December 2011**

JUDGMENTS

Case Name:

**Cedric Liburd
(Appellant)**

v

**[1] Eugene A. Hamilton
[2] Leroy Benjamin
[3] Andy Blanchette
(Respondents)**

**Hon. Attorney General of St. Christopher and
Nevis
(Interested Party)**

[High Court Civil Appeal No. 17 of 2010]

**The Attorney General of Saint Christopher
and Nevis
(Appellant / Interested Party)**

v

**[1] Cedric Liburd
[2] Eugene A. Hamilton
[3] Leroy Benjamin
[4] Andy Blanchette
(Respondents)**

[High Court Civil Appeal No. 18 of 2010]

(Saint Christopher and Nevis)

Date:

Monday, 5th December 2011

Coram:

The Hon. Mde. Janice M. Pereira, Justice of Appeal

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. E. Fontaine holding papers for Dr. Henry Browne

Respondent: Ms. Vernetta Richardson holding papers for the Attorney General of Saint Christopher and Nevis
Mr. De Lara McClure Taylor holding papers for Mr. Terence V. Byron

Issues:

Civil appeal – Election Petition – Challenge to the election of the first respondent in HCVAP 2010/017 to the National Assembly of the Federation of Saint Christopher and Nevis – Whether the respondent is qualified to be elected to the National Assembly in light of sections 27 and 28 of the Saint Christopher and Nevis Constitution Order 1983 – What it means for one to be “under any acknowledgement of allegiance, obedience or adherence to a foreign power or state”, by virtue of his/her own act

Result and Reason:

Held: dismissing the appeals with costs to be assessed unless agreed within 30 days and affirming the trial judge’s decisions below, that:

- 1. The question whether a person is by virtue of his own act, under an acknowledgment of allegiance, obedience or adherence to a foreign power or state, is to be determined in accordance with the provisions of the applicable foreign law. With respect to section 28(1)(a) of the Constitution, the Court concludes that: (i) there is no basis for upsetting the trial judge’s finding that Mr. Hamilton has not acknowledged allegiance, obedience or adherence to a foreign power or state; (ii) Mr. Hamilton does not fall within the category of persons who, by reason of their status as citizens of a foreign power, owe a duty of allegiance or obedience to that foreign power since he does not have the status of a citizen or national of the United States; and (iii) Mr. Hamilton is not under the protection of the United States as though he were a citizen.**

Sykes v Cleary [1992] HCA 60; (1992) 176 CLR 77 applied.

- 2. In concluding that a lawful permanent resident is not under an acknowledgment of allegiance and/or obedience and/or adherence to the United States, the learned judge clearly considered the disjunctive formulation of the reference to “allegiance”, “obedience” and “adherence” in section 28(1)(a) of the Constitution and evaluated the evidence in relation thereto.**
- 3. The trial judge’s finding at paragraph 46 that as a Green Card holder Mr. Hamilton enjoys certain rights and privileges in the United States with concomitant obligations and responsibilities particularly if he chooses to become a United States citizen later, cannot be looked at in isolation. It has to be placed in the context of the expert evidence of Mr. Chiappari that there is no acknowledgment of allegiance or adherence to the United States by a lawful permanent resident, and also in the context of the judge’s finding that the possession of a United States permanent resident card enables Mr. Hamilton to live and work in the United States. The learned judge properly construed section 28(1) and correctly found that Mr. Liburd was not disqualified.**
- 4. The learned judge’s statement that there was “no need for the intervention by the Attorney General” was merely explanatory of and introductory to her decision that the Attorney General would bear his own costs; it was not a ruling that he had no right to intervene in the proceedings. In the circumstances, there is no valid ground of appeal in relation to this issue.**
- 5. No person can be without a domicile and no person can at the same time and for the same purpose have more than one domicile. Also, an existing domicile is presumed to continue until it is proved that a new domicile has been acquired. At birth, every person receives a domicile of origin which can be supplanted by a domicile of**

choice; this domicile of choice can be acquired by an adult by the combination and coincidence of residence in a country and an intention to make his home in that country permanently or indefinitely. Central to the acquisition of a domicile of choice is the dual requirement of residence in fact, coupled with the intention of permanent or indefinite residence in the new jurisdiction. The learned judge quite properly found that Mr. Hamilton lives and works in Saint Christopher and occasionally visits his wife and children in Florida and there was no evidence that he maintains a permanent residence in the United States. Consequently, there is no basis upon which it can be asserted that Mr. Hamilton has acquired a domicile of choice in the United States.

A & L [2009] EWHC 1448 (Fam) applied; In the Estate of Fuld, Decd. (No. 3) [1968] P. 675 applied; Mark v Mark [2005] UKHL 42 applied; Gaines-Cooper v Revenue and Customs [2008] EWCA Civ 1502 applied.

Case Name:

**HMB Holdings Limited
v
[1] The Attorney General of Antigua and Barbuda
[2] David Matthias

[High Court Civil Appeal No. 7 of 2010]
(Antigua and Barbuda)**

Date:

Monday, 5th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. John Carrington

Respondent: Ms. Erica Edwards holding papers for the Attorney General of Antigua and Barbuda

Issues: Civil appeal – Compulsory acquisition of land – Land Acquisition Act, Cap. 233, Revised Laws of Antigua and Barbuda 1992 – Assessment of value of property acquired by the Government of Antigua and Barbuda – Methods used in valuing property to award compensation – Sales comparison approach – Residual value approach – Most appropriate method for valuing the property – Whether the property was a “greenfield site” – Whether the majority of the Board of Assessment was correct in rejecting the residual value method of assessment – If the sales comparison approach was the proper method to use in the circumstances, whether the majority of the Board failed to weigh properly the evidence of the value of comparable properties and therefore reached incorrect conclusions in relation thereto

Result and Reason: Held: allowing the appeal and substituting the award of \$45,499,102.09 in place of the award of \$23,820,999.00 made by the Board, and ordering that the respondents pay to HMB on this appeal two-thirds of the costs as assessed by the master in respect of the proceedings before the Board, that:

1. The criticisms of Member Michael are well founded, as, in the exercise of his discretion, he took into account irrelevant considerations, seemingly relied on his own personal knowledge and acted contrary to the principles of natural justice and the rules of evidence. In so doing, he committed grave errors of principle. As such, reliability cannot be placed on his award given the flawed basis on which it is grounded.

Raja Vyricherla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam [1939] A.C. 302 (P.C.) cited.

2. Assessing the Property’s potentialities for future

subdivision (which would include having regard to a notional or hypothetical subdivision) is quite different from embarking on an assessment on the basis that it had already been subdivided and all approvals obtained, or, in essence, as if its potentialities had already been realized. The Master Plan containing the specificities as provided to the company that prepared HMB's expert valuation report, coupled with their understanding that it was approved, was clearly the key basis for treating the Property as an existing development and utilizing the residual method. The Master Plan not having received planning approvals proceeded on an erroneous basis leading to a flawed result with too many variables.

Blakes Estate Limited v The Government of Montserrat [2005] UKPC 46 distinguished.

3. Notwithstanding the Chairman may have held an erroneous view as regards certain matters, he gave due consideration to the real question of deciding which competing method (on the evidence before him) was best suited for the valuation of the Property. He rejected the residual value method for good reason. Were the Court required to exercise its discretion afresh it would also reject the residual method in the circumstances of this case, given the grave danger it poses by inviting the risk of "compensating a party as if unrealized possibilities were in fact, realized possibilities."

Maori Trustee v Ministry of Works [1958] 3 All E.R. 336 applied.

4. It is undesirable to seek to compare sales of smaller parcels with the sale of a large tract of land. The Emerald Cove property represented the only true comparable and ought to have been treated as such rather than taking into account the smaller properties contained in the Deloitte report. This could only lead to an unrealistic result and discount of the potentialities of the Property for the kind of development which is

envisaged by both sides. In this respect, the Chairman fell into error in his application of the sales comparison approach.

Blakes Estate Limited v The Government of Montserrat [2005] UKPC 46 cited.

STATUS HEARING

Case Name:

Peaches Brooks

v

The Queen

[High Court Criminal Appeal No. 1 of 2007]

Date:

Monday, 5th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. E. Fontaine holding papers for Ms. Keesha Carty

Respondent:

Ms. Vernetta Richardson, with her, Ms. Erica Edwards

Issue:

Status of matter – Withdrawal of appeal

**Result / Order
& Reason:**

**[Oral delivery]
The appeal having been withdrawn is dismissed.**

Case Name:

Sylvan Brooks

v

The Queen

[High Court Criminal Appeal No. 2 of 2007]

Date: Monday, 5th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. E. Fontaine holding papers for Ms. Keesha Carty

Respondent: Ms. Vernetta Richardson, with her, Ms. Erica Edwards

Issue: Status of matter – Withdrawal of appeal

Result / Order & Reason: [Oral delivery]
The appeal having been withdrawn is dismissed.

Case Name: Lester Lestrade
v
The Queen

[High Court Criminal Appeal No. 1 of 2009]

Date: Monday, 5th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Vernetta Richardson, with her, Ms. Erica Edwards

Issue:	Status of matter – Discontinuance of appeal
Result / Order:	[Oral delivery] The appeal is dismissed.
Reason:	A notice of discontinuance was filed on 17th January 2011
Case Name:	Abraham Harrigan v Regina
	[High Court Criminal Appeal No. 2 of 2009]
Date:	Monday, 5th December 2011
Coram:	The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	
Appellant:	No appearance
Respondent:	Ms. Vernetta Richardson, with her, Ms. Erica Edwards
Issue:	Status of matter
Result / Order:	[Oral delivery] The appeal stands dismissed.
Reason:	The appellant was deceased.

Case Name:

[1] Maxine Herbert-Webster
 [2] Maxine Herbert-Webster (Lawful Attorney
 of Winston Herbert, a Patient)
 [3] Maxine Herbert-Webster (the Court-
 appointed Guardian of Wendell Herbert, a
 Minor)
 [4] Herbert's Commercial Center Limited
 v
 [1] The Registrar of Lands for the Island of
 Anguilla
 [2] Quantum Investment Services Ltd.
 [3] John Benjamin
 [4] Caribbean Commercial Bank (Anguilla)
 Limited
 [5] William Herbert Jr.
 [6] Michelle Herbert

[High Court Civil Appeal No. 9 of 2002]

Date: Monday, 5th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
 The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
 The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

	Appellants:	No appearance
	Respondent:	No appearance

Issue: Status of matter

Result: [Oral delivery]
 The appeal is struck out.

Reason: There were no appearances of or on behalf of the parties, and there seemed to be no interest in the matter. The Court also took into account the age of the matter in striking out the appeal.

Case Name:

**Raphael Edwards
v
Jeffrey Adolphus Carty**

**[High Court Civil Appeals Nos. 1 and 6 of
2007]**

Date:

Monday, 5th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Mr. Thomas Astaphan

Issue:

Status of matter – Failure to provide security of costs

**Result / Order
& Reason:**

[Oral delivery]

- 1. The appeal No. 1 of 2007 is dismissed by the Order for security of costs taking effect, that security not having been provided.**
- 2. The appeal No. 7 of 2007 is dismissed. The appellant is now deceased.**

Case Name:

**Ermine Adams-Plotkin
v
Peter M. Adams**

[High Court Civil Appeal No. 4 of 2009]

Date:

Monday, 5th December 2011

Before: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. E. Fontaine
Respondent: No appearance

Issue: Application for stay dismissed by the Order of the Court

Result: [Oral delivery]
The appeal is dismissed.

Reason: The appellant filed a notice of discontinuance and served the same on the respondent.

APPLICATIONS AND APPEALS

Case Name: Delano Smith
v
Regina

[High Court Criminal Appeal No. 2 of 2011]

Date: Monday, 5th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. E. Fontaine holding papers for Ms. Keesha Carty
Respondent: Ms. Vernetta Richardson, with her, Ms. Erica

Edwards

Issues:

Application for extension of time within which to appeal – Criminal appeal against sentence – Whether the mandatory life sentence handed down was unconstitutional being in contravention of ss. 6 and 9 of the Anguilla Constitution Order – Whether imposing a mandatory life sentence without having regard to the particular circumstances of the case before the court is inhuman and degrading punishment – Whether the learned judge erred in not considering the particular circumstances and mitigating factors of the case – Whether the learned judge erred in denying the appellant an opportunity to address the court on an appropriate and lesser sentence.

**Result / Order
& Reason:**

[Oral delivery]
The matter is adjourned to the next sitting of the Court in Anguilla at the request of counsel for the appellant.

Case Name:

**Paul Petty
v
Regina**

[High Court Criminal Appeal No. 3 of 2011]

Date:

Monday, 5th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. E. Fontaine holding papers for Mrs. Keesha Carty

Respondent:

Ms. Vernetta Richardson, with her, Ms. Erica Edwards

Issues:	Application for extension of time within which to appeal – Criminal appeal against sentence – Whether the mandatory life sentence handed down was unconstitutional being in contravention of ss. 6 and 9 of the Anguilla Constitution Order – Whether imposing a mandatory life sentence without having regard to the particular circumstances of the case before the court is inhuman and degrading punishment – Whether the learned judge erred in not considering the particular circumstances and mitigating factors of the case – Whether the learned judge erred in denying the appellant an opportunity to address the court on an appropriate and lesser sentence.
Result / Order & Reason:	[Oral delivery] The matter is adjourned to the next sitting of the Court in Anguilla at the request of counsel for the appellant.
Case Name:	Connell Richardson v Regina
	[High Court Criminal Appeal No. 4 of 2011]
Date:	Monday, 5 th December 2011
Coram:	The Hon. Mde. Janice M. Pereira, Justice of Appeal The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. E. Fontaine holding for Ms. Keesha Carty
Respondent:	Ms. Vernetta Richardson, with her, Ms. Erica Edwards

Issues: Application for extension of time within which to appeal – Criminal appeal against sentence – Whether the mandatory life sentence handed down was unconstitutional being in contravention of ss. 6 and 9 of the Anguilla Constitution Order – Whether imposing a mandatory life sentence without having regard to the particular circumstances of the case before the court is inhuman and degrading punishment – Whether the learned judge erred in not considering the particular circumstances and mitigating factors of the case – Whether the learned judge erred in denying the appellant an opportunity to address the court on an appropriate and lesser sentence.

Result / Order & Reason: [Oral delivery]
The matter is adjourned to the next sitting of the Court in Anguilla at the request of counsel for the appellant.

Case Name: Marville King
v
Regina

[High Court Criminal Appeal No. 5 of 2011]

Date: Monday, 5th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. E. Fontaine holding for Ms. Keesha Carty
Respondent: Ms. Vernetta Richardson, with her, Ms. Erica Edwards

Issues: Application for extension of time within which to appeal – Criminal appeal against sentence – Whether

the mandatory life sentence handed down was unconstitutional being in contravention of ss. 6 and 9 of the Anguilla Constitution Order – Whether imposing a mandatory life sentence without having regard to the particular circumstances of the case before the court is inhuman and degrading punishment – Whether the learned judge erred in not considering the particular circumstances and mitigating factors of the case – Whether the learned judge erred in denying the appellant an opportunity to address the court on an appropriate and lesser sentence.

**Result / Order
& Reason:**

[Oral delivery]

The matter is adjourned to the next sitting of the Court in Anguilla at the request of counsel for the appellant.

Case Name:

Whentworth Connor (alias Wrenford Connor)

v

[1] Mitchell Connor

[2] Gustav Company Limited

[High Court Civil Appeal No. 7 of 2011]

Date:

Monday, 5th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Intended Appellant /
Applicant:**

**Mr. Thomas Astaphan with instructing solicitor, Ms.
Rachel Atherton**

Respondents:

Ms. Yanique Stewart

Issues:

**Application for reconsideration of leave to appeal –
Whether the learned judge erred in failing to take into**

consideration the draft grounds of appeal filed with the application in which the applicant had set out details of his case and compliance with CPR 62.2(2) – Whether the learned judge erred by misdirecting herself in the application of the case she cited as supportive of striking down the application as fatally defective and non-compliant

Result / Order:

[Oral delivery]

1. The applicant is granted leave to appeal.
2. The appeal shall follow the course under the CPR Rules as amended.

Reason:

The Court was satisfied that the applicant had a realistic prospect of success.

Case Name:

**Jonathan Simon
v
Barnes Bay Development Ltd.**

[High Court Civil Appeal No. 8 of 2011]

Date:

Monday, 5th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. William Hare

Respondent: No appearance (unrepresented)

Issues:

Leave to appeal

Result / Order:

[Oral delivery]

1. The hearings of the application for leave to appeal

and the substantive appeal are adjourned to the BVI sitting in January 2012.

2. The appellant is to serve the respondent with written notice of the hearing to be heard during the week commencing 16th January 2012.
3. The costs are reserved for the BVI hearing.

Case Name:

**Sheldon Brooks
v
Regina**

[High Court Criminal Appeal No. 2 of 2008]

Date:

5 December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**Ms. Eustella Fontaine holding for Dr. Henry Browne
and Ms. Keesha Carty**

Respondent:

**Ms. Vernetta Richardson, with her, Ms. Erica
Edwards**

Issues:

**Appeal against conviction and sentence for errors in
directions given to jury by the trial judge – Directions**

Result / Order:

[Oral delivery]

1. The appellant shall file and serve skeleton argument with authorities no later than 31st January 2012.
2. The respondent shall file and serve skeleton argument with authorities by Friday, 16th March 2010.
3. Any Replies shall be filed and served by 30th March 2012.
4. The hearing of the matter shall be at the next sitting of the Court in Anguilla.

Case Name:

**PQ
v
[1] RS
[2] Sparrowhill Trading Limited
(by order dated 5th December 2011)**

[High Court Civil Appeal No. 63 of 2011]

Date:

Monday, 5th and Tuesday, 6th December 2011

Coram:

**The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Louise E. Blenman, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

**Mr. Malcolm Arthurs with instructing solicitor, Mr.
Daniel Wise of Martin Kenney & Co.**

Respondents:

**Mr. Mark Hapgood, QC with Ms. Tana'ania Small-
Davis (for the 1st respondent)
Mr. John Carrington (for the 2nd respondent)**

Issues:

**Supplemental disclosure – Norwich Pharmacal Order
– Norwich Pharmacal / Bankers Trust information –
Challenges to findings of fact made by the learned
trial judge – Whether the learned trial judge erred in
finding that the first respondent had requested from
its Professional Introducer everything that it was
entitled to request in accordance with the order
dated 14th September 2011 – Whether the trial judge
erred in finding that the first respondent had asked
the right questions in seeking to obtain information
for the appellant**

Result / Order:

**[Oral delivery]
1. The appeal is dismissed.
2. Costs awarded to the 1st and 2nd respondents to**

be assessed if not agreed within 21 days of today's date.

Reason:

An order of the court dated 14th September 2011 granted the appellant's application for a Norwich Pharmacal order against the first respondent, Trident Trust Company (BVI) Limited ("Trident"). This order required Trident to disclose information that it had in its possession relating to the company Sparrowhill Trading Ltd. ("Sparrowhill"), for which it acted as registered agent.

The Court held that the fact that evidence in the record disclosed that the company from which Trident had requested information on Sparrowhill may have had more information of a transactional nature, cannot be translated to a claim that Trident had not done all that it was required to do under the September 14th Order. From all that was before the learned trial judge, it was within the wide ambit of his discretion for him to have concluded that Trident had complied with the September 14th Order and that there was no need for another order in the same terms. This was a proper exercise of his discretion; the appellant has not surmounted the hurdle warranting this court's interference with that exercise. The trial judge was also correct in dismissing the application subsequently made by the appellant for supplementary disclosure by Trident insofar as it asserted the necessity for this information for the purpose of pursuing proceedings in the United States under the US Securities Exchange Act, given that he had already formed the view, so far on the evidence adduced before him, that the threshold test for Norwich Pharmacal relief had not been satisfied. He was not satisfied that the appellant could show that there was wrongdoing in relation to it.

Case Name:

**Kenneth M. Kryz and Joanna Lau
(as Joint Liquidators of Fairfield Sentry**

**Limited, Fairfield Sigma Limited and Fairfield
Lambda Limited)**

**[High Court Civil Appeal No. 69 of 2011]
(Territory of the Virgin Islands)**

Date: Monday, 5th December 2011

Coram: The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mde. Louise E. Blenman, Justice of Appeal [Ag.]

Appearances:
Applicant: Mr. Alan Maclean, QC, with him, Mr. William Hare

Issues: Conduct of liquidations – Sanction of BVI Court required to pursue BVI Redeemer Actions and US Redeemer Actions – Application for continuing sanction from the Court to pursue a further appeal in BVI Redeemer Actions and US Redeemer Actions pending determination of such appeal – Ex-parte application

Result / Order: IT IS ORDERED AND DIRECTED THAT:
Pending the final determination of the Applicants' appeals in Civil Appeal No. 62/2011 against the Orders of the Honourable Justice Bannister QC dated 16 September 2011 giving judgment for the Defendants on the 'good consideration' Preliminary Issue in claim number BVIHC (Com) 30/2010 – *Fairfield Sentry Limited (in Liquidation) and others v Bank Julius Baer & Co Ltd and 33 others* and seven other claims and against the Order of the learned judge of 10 October 2011 granting summary judgment in the said proceedings in favour of the defendants thereto:

1. The Companies in liquidation have sanction from the Court to take such steps as are necessary or appropriate further to prosecute expeditiously their common law claims in the United States and elsewhere (including, for the avoidance of doubt, all claims based on mistake and/or unjust

enrichment) on the same basis as they did immediately prior to the said Order by the Honourable Justice Bannister QC of 16 September 2011.

2. The Appellants have approval to take such steps as are necessary or appropriate further to prosecute expeditiously in the United States Bankruptcy Court claims brought pursuant to ss. 245 and 246 of the Insolvency Act 2003 on the same basis as they did immediately prior to the said Order by the Honourable Justice Bannister QC of 16 September 2011.