

CHAMBER HEARING

Tuesday, 22nd May 2012

HEARING (SAINT LUCIA)

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

Case Name: Hubert Jn. Baptiste
v
Saint Lucia Electricity Services
[High Court Civil Appeal No. 28 of 2011]

Appearances:
Appellant: Mr. Hubert Jn. Baptiste in person
Respondent: No appearance

Issues: Application to withdraw appeal

**Result / Order
& Reason:** [Oral delivery]
1. The appellant shall, pursuant to CPR 2000 62.24(1) & (2) as amended, serve a copy of the notice of withdrawal on the respondent.
2. The appeal is withdrawn, and accordingly dismissed.

Case Name: [1] Edme Celestin aka Edmay Celestin
[2] Thomas Celestin
v
[1] Lindley Lubin
[2] Francis Lubin

[High Court Civil Appeal No. 11 of 2012]

Appearances:

Intended Appellant / Applicant: Ms. Lydia Faisal (appearing for 2nd named appellant)

Respondents: No appearance

Issue:

Application for leave to appeal

Result / Order:

[Oral delivery]

- 1. Leave to appeal the order of the trial judge made on 12th March 2012 is hereby granted.**
- 2. The proceedings in the court below are hereby stayed pending the hearing and determination of the appeal.**

Reason:

The Court noted that the trial judge, of his own initiative, made orders to have Mr. Thomas Celestin struck out as a party to the proceedings, contrary to Part 26 of the Civil Procedure Rules 2000. No application had been made by counsel to have this done. Additionally, the parties were not given an opportunity to be heard in relation to this issue.

The Court was satisfied that the appellant had met the required threshold for leave to appeal. It was further held that it would be in the interests of justice to stay the proceedings in the court below pending the hearing and determination of the appeal.

Case Name:

Andrew Mc Phee

v

[1] Restore the Environment Inc.

[2] Sylvester Bernard Joseph

[High Court Civil Appeal No. 12 of 2012]

Appearances:

Intended Appellant / Applicant: Mr. Gerard Williams

Respondents: Mrs. Wauneen Louis-Harris (Mr. Sylvester Joseph, the second named respondent, was also present)

Issues:

Application for leave to appeal – Whether trial judge wrongly exercised his discretion in striking out the applicant's defence

Result / Order:

[Oral delivery]

1. The application for leave to appeal by consent is treated as an interlocutory appeal.
2. The appeal is allowed and the order of the trial judge made on 3rd April 2012 is set aside.
3. The respondent shall have costs on the application and on the appeal in any event fixed in the sum of \$1,500.00 to be paid by the appellant no later than Wednesday, 13th June 2012.

Reason:

The Court found that the basis on which the applicant's defence was struck out in the court below was not very clear.

On 25th September 2011, the trial judge made an unless order which required the applicant to file affidavit evidence by 7th October 2011, failing which a sanction would be imposed. However, the wording of the order was not clear and unequivocal. The Court held that there must be no doubt about the manner of interpretation of an order when sanctions are being applied. Further, the sanction applied must be proportionate to what is being sought in the order. In the circumstances, the Court thought that it was in the interests of justice to allow the appeal and have the applicant's defence restored.

Case Name:

Conrad Charles

v
The Attorney General

[High Court Civil Appeal No. 9 of 2012]

Appearances:

**Appellant /
Respondent:**

Ms. Cynthia Hinkson-Ouhla

**Respondent /
Applicant:**

Ms. Jan Drysdale

Issues:

**Application to strike out notice of appeal –
Application for extension of time to file notice of
appeal**

Result / Order:

[Oral delivery]

**The application to strike out the notice of appeal and
the application for extension of time to file notice of
appeal are to be listed before the Full Court of
Appeal sitting during the week commencing on 25th
June 2012.**

Reason:

**The Court noted that the application for an extension
of time had been short served. Counsel for the
appellant/respondent requested an adjournment so
that the two applications could be heard together at
a later date.**

**The Court considered that the most appropriate
course would be to list the matter for hearing before
the Full Court for both applications to be dealt with
together.**

Case Name:

Maurice Dantes
v
Cecilia Bibiana Joseph

[High Court Civil Appeal No. 16 of 2012]

Appearances:

**Appellant /
Applicant:**

Ms. Beverley Downes

Respondent:

Ms. Antonia Auguste

Issues:

Application for stay of execution

Result / Order:

[Oral delivery]

- 1. A copy of the order being appealed be filed with the Court of Appeal no later than Wednesday, 30th May 2012.**
- 2. That the applicant/appellant be at liberty to file and serve a supplemental affidavit in support of the application for a stay of the order of the Court made on 30th April 2012, no later than Wednesday, 30th May 2012.**
- 3. The respondent is at liberty to file and serve an affidavit in response no later than 15th June 2012.**
- 4. Skeleton arguments to be filed and served by the appellant/applicant and the respondent no later than Friday, 15th June 2012.**
- 5. The hearing of the application is adjourned to the next chamber hearing date fixed for Thursday, 21st June 2012.**

Reason:

Counsel for the applicant indicated that the case files had only been passed to her the previous Thursday; she did not originally have conduct of the matter. As a result of this, she did not have sufficient time to properly review the files in preparation for the day's hearing.

The Court noted that the respondent had been short served. The applicant requested some additional time to file a supplemental affidavit, and the respondent requested some time to put in a response after the supplementary affidavit was served on them.

MATTERS DEALT WITH ON PAPER

Case Name:

[1] Austin Josiah
[2] Scott Glendinning
[3] Ralph Potter

v

Stanford Financial Group

[High Court Civil Appeal No. 7 of 2012]
(Antigua and Barbuda)

Date:

Tuesday, 22nd May 2012

On paper:

**Appellants /
Applicants:**

Cumberbatch & Associates

Respondent:

In person

Issues:

Application for stay of execution

Result / Order:

1. The following documents are to be forwarded to the Court of Appeal headquarters no later than Friday, 8th June 2012:
 - a. Consent order;
 - b. Copy of notice of discontinuance;
 - c. Application for costs and affidavit in support;
2. The application is adjourned for further consideration at the next chamber hearing date scheduled on 21st June 2012.

Reason:

There appeared to have been a consent order by which judgment was entered for the respondent in the court below. However, the issue of costs was not dealt with. The matter was later discontinued, and the appellants/applicants subsequently sought to

obtain costs.

The Court required additional documents in order to properly deal with the matter.

Case Name:

**Leroy Silston
v
Ruthlyn Chambers**

**[High Court Civil Appeal No. 8 of 2012]
(Antigua and Barbuda)**

Date:

Tuesday, 22nd May 2012

On paper:

**Appellant /
Applicant:**

Lake & Kentish

Respondent:

Clarke & Clarke

Issues:

Application for stay of execution of the judgment of Michel J. made on 15th March 2012 – Application for respondent to be restrained from enforcement

Result / Order:

- 1. The application for a stay of the judgment of Michel J. made on 15th March 2012 is refused.**
- 2. Costs to the respondent in the sum of \$1,000.00.**

Reason:

Having reviewed the evidence before it, the Court was not satisfied that the applicant met the threshold for the grant of a stay and as such, could find no basis for making an order granting one.

Case Name:

Joseph Raphael Le Blanc

v
James S.W. Cyrille

**[High Court Civil Appeal No. 3 of 2012]
(Commonwealth of Dominica)**

Date: Tuesday, 22nd May 2012

On paper:

**Appellant /
Applicant:** Ms. Noelize N. Knight Didier

Respondent: In person

Issues: Application for extension of time to appeal – Whether the trial judge erred in refusing the appellant's application to have witness statements of deceased witnesses put into evidence

Result / Order:

1. The application for an extension of time within which to file an appeal out of time is granted.
2. The appellant/applicant shall file the notice of appeal along with a copy of the order being appealed no later than 14 days from today's date, that is on or before 6th June 2012.

Reason: Although there was inordinate delay in making the application for an extension of time to appeal, the Court, having regard to the Overriding Objective, took the view that it was in the interests of justice to grant the application.

Case Name:

[1] Yoland Jno. Jules
[2] Valentine Joseph
[3] Anselm James Leblanc
[4] John Augustin
v
[1] Emmanuel Royer

[2] Mona Virginia Royer

**[High Court Civil Appeal No. 26 of 2011]
(Commonwealth of Dominica)**

Date: Tuesday, 22nd May 2012

On paper:

**Appellants /
Applicants:**

Ms. Noelize N. Knight Didier

Respondents:

In person

Issues:

Application for stay of execution

Result / Order:

- 1. The appellant shall serve the application on the respondents on or before 31st May 2012.**
- 2. The appellant shall file an affidavit of service and send a copy of the same to the Court of Appeal headquarters on or before 4th June 2012.**
- 3. The parties shall comply with CPR 2000 as amended, as well as all Practice Directions, applicable to the application herein.**
- 4. The matter is adjourned to the next chamber hearing scheduled for June 21, 2012.**

Reason:

There was no evidence of service of the application on the respondents.

Case Name:

Errol Alexander

v

Annie Marie Garraway

**[High Court Civil Appeal No. 35 of 2011]
(Commonwealth of Dominica)**

Date:

Tuesday, 22nd May 2012

On paper:

**Appellant /
Applicant:**

Mr. William E. Riviere

Respondent:

Mr. Gerald Burton

Issues:

Application for leave to amend grounds of appeal

Result / Order:

- 1. Leave is granted to amend the grounds of appeal contained in the notice of appeal filed on 21st December 2011.**
- 2. The amended notice of appeal filed on 1st March 2012 is deemed to be properly filed.**

Reason:

The application was unopposed by the respondent. The Court was of the opinion that no substantial prejudice would be suffered by the respondent in allowing the appellant to amend the grounds of appeal.

Case Name:

Emanuel Azille

v

The State

**[High Court Criminal Appeal No. 3 of 2011]
(Commonwealth of Dominica)**

Date:

Tuesday, 22nd May 2012

On paper:

**Appellant /
Applicant:**

Mr. Wayne Norde

Respondent:

The Director of Public Prosecutions

Issues:

Application to rely on affidavit evidence and additional grounds of appeal

Result / Order:

1. The appellant is granted leave to amend his grounds and to serve the additional grounds of appeal on the respondent on or before 30th May 2012.
2. The appellant shall file and serve skeletal arguments in reference to his appeal no later than 15th June 2012.
3. The respondent shall file and serve skeletal arguments no later than Friday July 6th 2012.

Reason:

The Court, in the exercise of its discretion, considered that it was in the interest of justice to allow amendments to the grounds of appeal. No prejudice occasioned to the DPP thereby.

Case Name:

**Joan Isaac
v
Cecil Isaac**

**[High Court Civil Appeal No. 13 of 2009]
(Grenada)**

Date:

Tuesday, 22nd May 2012

On paper:

Appellant: Amicus Attorneys

Respondent: Ms. Celia Edwards, QC

Issues:

Application for an extension of time to comply with order

Result / Order:

The application for an extension of time to comply with paragraph 1 of the order granting conditional leave to Her Majesty in Council is granted and the payment of £500 made on 2nd May 2012 is deemed as

having been properly made.

Reason: The delay in complying with the order was not inordinate (only 1 day).

Case Name: Dexter Lewis
v
The Commissioner of Police

[Magisterial Criminal Appeal No. 1 of 2012]
(Montserrat)

Date: Tuesday, 22nd May 2012

On paper:

Applicant: In person

Respondent: The Director of Public Prosecutions

Issues: Application for an extension of time to appeal and bail pending appeal

Result / Order:

1. Extension of time for filing the appeal is hereby granted.
2. The notice of appeal is to be filed no later than 6th June 2012.
3. The applicant is further granted bail pending his appeal, the terms to be fixed by the magistrate.
4. A copy of this order shall be served on the magistrate and Superintendent of Prisons.

Reason: The default term of imprisonment imposed by the magistrate in this matter was in excess of her jurisdiction. She imposed a default term of 1 year, but pursuant to section 43 of the Magistrate's Court Act, Cap. 2.02, Revised Laws of Montserrat 2002, such a term should not exceed 6 months.

The Court held that in the circumstances, as a matter of principle, the appellant ought to be granted an extension of time.

Case Name:

[1] Susan Barbara Dodge
[2] Tony Zapparoli
v
[1] Michael Simanic
[2] Royal St. Kitts Casino Limited
[3] Alceo Zuliani
[4] Leo Tofoli
[5] Trans-American (St. Kitts) Limited

St. Kitts Nevis-Anguilla National Bank
Limited
1st Garnishee

First Caribbean International Bank
(Barbados) Ltd.
2nd Garnishee

[High Court Civil Appeal No. 1A of 2012]
(Saint Christopher and Nevis)

Date:

Tuesday, 22nd May 2012

On paper:

Intended Appellants / Applicants:	Mr. E. Anthony Ross, QC (Caribbean Associated Attorneys)
Respondents / Garnishees:	Ms. Angela Cozier (Cozier & Associates) for the 5 th respondent Mr. Damien Kelsick (Kelsick Wilkin & Ferdinand) for the 2 nd garnishee

Issues:

Application for leave to appeal – Application to strike out the appellants' application for leave to appeal

Result / Order: The application for leave to appeal and the application to strike out the application for leave to appeal is adjourned to next chamber hearing scheduled on 21st June 2012.

Reason: The applicants filed their notice of appeal prior to obtaining leave to appeal. The respondents, by application dated 21st May 2012 (that is, the previous day), applied to strike out the application for leave to appeal. The Court thought it best to adjourn the matter to allow both applications to be determined, since the application to strike out had been short served.

Case Name: Learie Smith
v
Kelvin Jack

[Magisterial Civil Appeal No. 6A of 2011]
(Saint Christopher and Nevis)

Date: Tuesday, 22nd May 2012

On paper: **Applicant:** Mr. John Cato

Respondent: In person

Issues: Application for permission to file appeal out of time

Result / Order: The application for permission to file the appeal out of time is refused.

Reason: There was non-compliance with the order of Baptiste JA dated 24th April 2012.

Case Name:

**Brian Brookes
v
Johnny Matthew**

**[Magisterial Civil Appeal No. 5 of 2011]
(Saint Christopher and Nevis)**

Date:

Tuesday, 22nd May 2012

On paper:

Applicant: Mr. John Cato

Respondent: In person

Issues:

Application for extension of time to complete appeal

**Result / Order
& Reason:**

The application to extend time to appeal and the amended notice of appeal filed on 6th May 2011 are struck out for want of prosecution.

Case Name:

**Baldwin Daniel
v
[1] Edmund France
[2] Andra Fergus
[3] Anmars Enterprises Inc**

**[High Court Civil Appeal No. 1 of 2012]
(Saint Vincent and the Grenadines)**

Date:

Tuesday, 22nd May 2012

On paper:

Appellant: Mr. Duane A. Daniel

Respondents: Williams & Williams for the 1st respondent

Issues: Case management – Application for leave to appeal

**Result / Order
& Reason:**

1. The application for leave to appeal is treated as the appeal.
2. The appeal is allowed being of the view that the preconditions for entry of a default judgment have not been met.
3. The default judgment granted by the Court on March 9, 2010 is accordingly set aside.
4. The claimant is to serve the amended claim form on the defendants.
5. The matter is to proceed in accordance with the provisions of CPR 2000.
6. Costs to the appellant/2nd defendant in the sum of \$750.00

Case Name:

**Harvey Zabusky
v
[1] Viscaya Armadora S.A.
[2] P.M.P. Anguilla Ltd.
[3] Virgtel Limited**

**[High Court Civil Appeal No. 70 of 2011]
(Territory of the Virgin Islands)**

Date: N/A (order not yet made)

On paper:

Appellant: Mc W. Todman & Co.

**Respondents /
Applicants:** Mr. Paul B. Dennis (O'Neal Webster)

Issues: Application for security for costs

Result / Order: [Pending – Inquiries being made about status of the appellant’s written submissions. Awaiting response.]

Reason: Counsel for the appellant had previously requested an adjournment because his client was ill. This adjournment was granted. However, no further information had been received regarding the appellant’s ability to instruct his counsel in relation to the respondents’ application for security for costs.

Case Name: Glen Henley (Trading as Cane Garden
Pleasure and Water Sports Equipment)
v
Poco Loco Enterprises Incorporated (A
Delaware Corporation)

[High Court Civil Appeal No. 26 of 2011]
(Territory of the Virgin Islands)

Date: Tuesday, 22nd May 2012

On paper:
Appellant / Mr. John Carrington (Mc W. Todman & Co.)
Applicant:

Respondent: Forbes Hare

Issues: Application to reverse the order of the Court of Appeal

Result / Order & Reason: The matter is to be heard by the Full Court during the sitting in the week commencing 1st October 2012 or by video-conference at a convenient date to be determined by the Chief Registrar in consultation with the parties.

Reason:

A single judge does not have the jurisdiction to deal with an application which challenges a decision of the Full Court.