

VIDEOCONFERENCE

ANTIGUA AND BARBUDA

Wednesday, 9th May 2012

APPLICATIONS AND APPEALS

Case Name: **Gaden Brooks v Sonel Kirwan and Others
[High Court Civil Appeal No. 38 of 2011]**

Coram: **The Hon. Sir Hugh A. Rawlins, Chief Justice
The Hon. Mde. Janice M. Pereira, Justice of Appeal
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

Appearances:

Applicant / Intended Appellant:	Ms. Samantha May
Respondent:	No appearance (counsel on record is Mr. Steadroy C.O. Benjamin, who is present but cannot be heard)

Issues: **Application for leave to appeal order of the master striking out the second and third respondents as parties – Road traffic accident – Interpretation of ss. 4 and 9 of the Motor Vehicles Insurance (Third-Party Risks) Act, Cap. 288, Revised Laws of Antigua and Barbuda 1992 (“the Act”) – Whether the master erred in holding that once a policy of insurance under the Act was in place, the 2nd and 3rd respondents were not in breach of their statutory duty, as any restriction contained in the policy as to age would be, in any event, of no effect against the applicant**

Result / Order: **[Oral delivery]
1. The application for leave to appeal is dismissed.
2. Costs on the application is awarded to the respondent in the sum of \$1,000.00.**

Reason: **In this matter, although the rented vehicle that was involved in the accident was validly insured, the insurance policy had an age restriction which**

excluded the driver of the vehicle (the first respondent) from coverage under the policy. The Court held that while this restriction would operate against the owners of the vehicle (the second and third respondents in this matter) it would be of no effect in relation to the applicant, who was a third party to the contract of insurance. The Motor Vehicles Insurance (Third-Party Risks) Act ensured that the third party's claim remained unaffected by the restriction in the insurance policy. Thus, it would not be necessary for the owners of the vehicle to be joined as parties to the applicant's claim.

The applicant was therefore unable to satisfy the Court that he had a realistic prospect of success on appeal.

Case Name:	Paget Lake v Liat (1974) Ltd. [High Court Civil Appeal No. 4 of 2003]
Appearances:	
Appellant:	Ms. Laurie Freeland-Roberts
Respondent:	Ms. Stacy Richards-Anjo
Issues:	Application for leave to appeal to Her Majesty in Council – Application for an adjournment
Result / Order:	[Oral delivery] The hearing of the motion for leave to appeal to Her Majesty in Council is adjourned to Wednesday 20th June 2012 at 9:30 a.m. by videoconference.
Reason:	The respondent requested an adjournment because Mr. John Carrington, who had conduct of the matter, was unable to be present in the jurisdiction to take part in the proceedings. The appellant was not opposed to the adjournment being granted.

Case Name: Landmark Ltd. and Another v American International Bank (In Receivership)
[High Court Civil Appeal No. 3 of 2010]

Appearances:

Appellants: Mr. Dane Hamilton, QC

Respondent: Mr. Hugh Marshall Jr.

Issues: Application to amend order of the Court – Application for stay of execution

Result / Order: [Oral delivery]

1. The application dated 24th January 2012 to correct the Order of the Court which granted Conditional Leave to appeal to Her Majesty in Council by deleting paragraph 2 of the said Order is granted, and accordingly, paragraph 2 of the Order is hereby deleted.
2. The application for stay of execution of the Order contained in the Judgment of the Court of Appeal dated 4th July 2011 is dismissed.
3. Landmark Ltd. and Woods Development Ltd. shall pay \$1,000.00 costs to American International Bank (In Receivership) on each application, together a total of \$2,000.00.

Reason: The Court was satisfied that it had an inherent jurisdiction to correct the Order which it had earlier made. Paragraph 2 was erroneously inserted into the settled order.

In relation to the application for stay of execution, the Court was of the view that the affidavit in support fell short of the required evidential basis for granting the stay. The Court was also concerned that the paragraph which raised the issue of a stay in the first place was erroneously included by the High Court Registrar. No stay had ever been formally requested

by counsel.