

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVAP2026/0004

BETWEEN:

GLOBAL BANK OF COMMERCE LTD (IN OFFICIAL ADMINISTRATION)

Appellant

and

NOREEN PHILLIPS STAINES

Respondent

Before:

The Hon. Mde Vicki Ann Ellis
The Hon. Mde. P. Nicola Byer
The Hon. Mde. Gertel Thom

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Dr. David Dorsett for the Appellant
Mr. Hugh Marshall and Ms. Kema Benjamin for the Respondent

2026: July 2;
September 25.

Interlocutory appeal – The court’s power to lift a statutory stay imposed by section 117 of the International Banking Act 2016 Antigua and Barbuda (No. 6 of 2016) – Whether the learned trial judge erred in lifting the stay or moratorium imposed by section 117 of the Act for the purpose of determining liability only – The court’s exercise of discretion in granting leave to continue legal proceedings against a bank which is in official administration under section 117(3) of the Act – Application and interpretation of section 117(2) and (3) of the Act – Meaning of the words “without prejudice to the generality of the foregoing” in section 117(3) of the Act and its effect on section 117(2) of the Act – The effect of section 2 of the Law (Miscellaneous Amendments) Act 2018 (No. 26 of 2018)

Mrs. Noreen Phillips Staines (“the respondent”) filed a claim against Global Bank of Commerce Ltd (“the Bank” or “the appellant”) seeking declaratory relief, damages, injunctive relief and costs. She claimed that her late husband, Mr. Gerald Percival Staines obtained a loan facility in the sum of US\$630,000.00 from the Bank. On or about 27th June 2016, the appellant wrote to the respondent demanding the sum of US\$995,652.73. The respondent contends that the demand was defective and of no legal effect and that it was made for monies outside the terms of the guarantee. She

challenges the legality of the demand on the basis that the said facility is null and void and of no legal effect because it was a commercial banking transaction entered into within the state of Antigua and Barbuda, contrary to the operating terms of the appellant's license as an offshore bank. The respondent further asserts that the guarantee, as part of an illegal transaction, is void *ab initio* and of no legal effect. Consequently, no lawful demand has ever been made in writing or at all and she is under no obligation to make payment upon said demand.

Trial of the matter was scheduled for 17th November 2025. However, on 10th November 2025 the Bank was placed into official administration. The effect of which was that section 117 of the **International Banking Act 2016 Antigua and Barbuda** ("the Act") was triggered and a statutory moratorium or stay came into effect. Consequently, the 17th November 2025 trial date was vacated.

On 27th November 2025, the respondent (then, the claimant) filed an application in the court below seeking that the stay imposed by the appointment of the administrator be lifted to enable the trial and determination of the issues in the claim. The Bank filed a notice of opposition to the respondent's application on 4th December 2025, in which it contended that the court has no jurisdiction to disapply section 117(2) and (3)(a) of the Act or to lift the stay imposed by section 117(3)(a) of the Act.

In her order dated 22nd January 2026, the learned trial judge noted that the Bank's opposition to the application rested on a flawed interpretation of the statutory provisions and was confined to that basis alone. However, the learned judge went on to consider all relevant factors governing the lifting of the statutory stay, taking into account that the respondent confirmed that the proceedings would be confined strictly to the determination of liability only, and that no enforcement action would be pursued within this forum. She concluded that in all the circumstances, permitting the claim to proceed would not undermine the statutory stay or prejudice the administration of the Bank's affairs. After balancing the statutory objectives of section 117 of the Act against the interests of justice and fairness, the learned judge granted the respondent's application to lift the stay to continue the respondent's claim for the purpose of determining liability only.

Dissatisfied with the decision of the learned trial judge, the appellant filed a notice of appeal on 4th February 2026 in which it sought to set aside the decision of the learned trial judge's on the sole ground that in lifting of the moratorium imposed by section 117 of the **International Banking Act 2016** (as amended) and permitting the claim to proceed to judgment the learned judge erred in that she failed to have regard or any proper regard to section 117(2) of the Act.

Held: dismissing the appeal, affirming the orders of the learned trial judge and awarding costs of the appeal to the respondent to be agreed within 21 days of the date of this judgment or if there is no agreement between the parties, to be assessed upon application to a judge or master of the High Court, that:

1. The court's role when interpreting a statute is to ascertain the meaning that the legislature intended to convey through the legislation, often described as the "intention of Parliament". This exercise is performed through an objective analysis of the words in the statute, having regard to their context, the content

of the wider act, the purpose and the function that the provision exists to perform in pursuit of the legislation's aims.

R (on the application of O (A Child)) v Secretary of State for the Home Department [2023] AC 255 applied.

2. The Antigua and Barbuda Legislature enacted the **Law (Miscellaneous Amendments) Act 2018 (No. 26 of 2018)** which, inter alia amended section 117 of the Act by repealing subsection (3) thereof. The amendment, though slight, has a significant impact on the interpretation and application of that section. This amendment relocated the concluding sentence in the original subsection 117(3) of the Act from paragraph (b) to the end of the subsection, such that it now grammatically qualifies both paragraphs (a) and (b). The amendment now puts beyond doubt that, during official administration, the commencement or continuation of any action, execution or other proceedings is prohibited unless and until the administration is terminated, or the applicant secures the prior leave or direction of the court.
3. Section 117(2) of the Act establishes a broad statutory stay during the period of administration and an outright bar to any remedies against the licensed financial institution in respect of any claim. However, section 117(3) of the Act commences with the phrase "Without prejudice to the generality of subsection (2)". This phrase narrows possible ambiguity about how earlier words in a provision are to be read. It preserves the broad scope of the earlier clause as it operates as a legal safeguard used to ensure that a specific example does not limit the broad general rule that precedes it. The words that follow the phrase are intended to be additional, specific or exemplary measures that do not limit or reduce the general power/prohibition already established by the preceding text. The phrase also prevents a later, specific example or qualification from being interpreted as exhausting or restricting the general rule. Overall, the phrase therefore serves as a drafting tool to preserve the breadth of general provisions while allowing for specific examples or powers to be enumerated and permits a court, during administration, to grant leave or otherwise direct that proceedings may be commenced or continued against the licensed financial institution.

Kellogg Brown & Root Holdings UK (Ltd) v Revenue and Customs Commissioners [2010] All ER (D) 271 (Feb) followed.

4. There is legislative tension between the two subsections in that section 117(2) of the Act says the remedy is prohibited '*on and during the appointment...*' while section 117(3) of the Act adds an escape valve: '*... unless the court directs otherwise*' or by '*prior leave of the court.*' In statutory interpretation, because section 117(3) of the Act is explicitly tied back to section 117(2) of the Act via the phrase 'Without prejudice to the generality of the foregoing' mechanism, the court's power to grant 'leave' or 'direct otherwise' acts as the gatekeeper for both sections. If a creditor, shareholder, depositor or any other person successfully convinces a judge to grant 'leave' under section 117(3) of the Act to continue legal proceedings, that order effectively carves out a legal exception to the broad 'no remedy' stay in section 117(2) of the Act simultaneously.

Unfortunately, in establishing this “carved-out” right, legislatures generally do not provide any guidance on the principles to be applied to determine when an application to lift the statutory stay should be granted. It is essentially left to the discretion of the courts and in exercising this discretion, a court must be mindful that the intention of the statutory prohibition is to assist the administrator to achieve the purpose for which the administration was mandated. Where this intention is not likely to be impeded, the court ought to grant leave.

Re Atlantic Computers Systems Plc [1992] Ch 505 followed; **Innovate Logistics Limited (in administration) v Sunberry Properties Limited** [2008] EWCA Civ 1261 applied.

5. An appeal against a judgment given by a judge in the exercise of a judicial discretion would not be allowed unless the appellate court is satisfied that, in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or by taking into account or being influenced by irrelevant factors and considerations; and that, as a result of the error or degree of the error in principle, the trial judge’s decision exceeded the generous ambit within which reasonable disagreement was possible and might therefore be said to be clearly or blatantly wrong. This court is not satisfied that the Bank has met the threshold in this appeal. In this Court’s judgment, the order made by the judge below is well reasoned and measured and there is no basis upon which this Court could or should interfere.

Dufour and Others v Helenair Corporation Ltd (1996) 52 WIR 188 applied.

JUDGMENT

- [1] **ELLIS JA:** This is an interlocutory appeal against the decision of the learned trial judge dated 22nd January 2026 wherein she granted the respondent leave to continue legal proceedings against the appellant, Global Bank of Commerce Ltd (the “Bank”), which had been placed into official administration. That decision effectively lifted the statutory stay imposed by virtue of section 117 of the **International Banking Act 2016**¹ (as amended) (“the Act”) of Antigua and Barbuda, for the purpose of determining the issue of liability only.

¹ No. 6 of 2016.

Background

- [2] It is necessary to set out in context the factual and chronological background to this appeal as well as the legislative history of the Act in order to analyse the parties' arguments and properly dispose of this appeal.
- [3] On 23rd August 2022, the respondent, Mrs. Noreen Phillips Staines filed a claim against the Bank, seeking inter alia certain declaratory relief, damages, injunctive relief and costs ("the Claim"). In the court below, the respondent claimed that on or around 16th October 2007, her late husband, Mr. Gerald Percival Staines, obtained a loan facility from the appellant in the sum of US\$630,000.00. The facility became repayable upon demand and, in the absence of such demand, by monthly payments of US\$13,810.58. Both facilities were supported by a single guarantee of the respondent in the amount of US\$350,000.00 and a legal charge.
- [4] On or about 27th June 2016, the appellant wrote to the respondent demanding the sum of US\$995,652.73. On or about 14th July 2016, the appellant issued a Notice to Pay Off to the respondent under the demand.
- [5] By the Claim, the respondent contends that the demand was defective and of no legal effect and that it was made for monies outside the terms of the guarantee. She also challenges the legality of the notices on the ground that the said facility is null and void and of no legal effect because it was a commercial banking transaction entered into within the jurisdiction of Antigua and Barbuda which is contrary to the operating terms of the appellant's license as an offshore bank. The respondent further asserts that the guarantee being part of an illegal transaction is also void *ab initio* and of no legal effect. Consequently, no lawful demand has ever been made in writing or at all and she is under no obligation to make payment upon a demand otherwise than in accordance with section 64(2) of the **Registered Land Act**.²

² Cap. 374, Revised Laws of Antigua and Barbuda.

[6] The Claim seeks various remedies, namely:

- (1) A declaration that the defendant is not currently entitled to sell the charged land.
- (2) A declaration that the defendant has not issued a Demand within the meaning of the charge entered upon the land.
- (3) A declaration that the Power of Sale reserved to the defendant has not arisen under section 72 of the Registered Land Act Cap. 374.
- (4) A declaration that there has been no default existing under the Charge upon the lands.
- (5) A declaration that the commercial transaction entered into by the Defendant Corporation and Gerald Percival Staines on or about 16th October 2007, with the claimant as Guarantor was unlawful and in direct contravention of its then Banking License, its incorporation status and remains unenforceable and *void ab initio*.
- (6) A Declaration that no monies are due by the claimant to the defendant under the Deed of Guarantee dated 16th October 2009, no demand having been made by the Defendant to the Claimant thereunder.
- (7) A declaration that the Notice to Pay Off dated 14th July, 2016 is unlawful and void there having been no demand under the Charge existing for 30 days prior to its issue.
- (8) In the alternative, a Declaration that the Defendant has breached the Claimant's equity of redemption in contravention of section 70 of the Registered Land Act Cap. 374.
- (9) Damages for Breach of Contract.

(10) Damages for Breach of Statutory Duty.

(11) Damages for Breach of the Equity of Redemption.

(12) Punitive damages for conduct calculated to embarrass the claimant and to unlawfully compel the claimant to settle debts not lawfully due.

(13) An Injunction to restrain the defendant, its agents and/or servants from acting upon the Notice to Pay off dated 14th July 2016 in relation to land.

(14) An Order to direct the defendant to cause the removal of the Charges.

(15) Costs.

(16) Any further relief this Honourable Court deems fit.

[7] The matter was set down for trial for 17th November 2025. However, on 10th November 2025 the Bank was placed into official administration, and an official administrator was appointed ("the Administration"). As a result of the Bank being placed into Administration, section 117 of the Act was triggered and a stay on legal proceedings against the Bank came into effect. As a result of this statutory stay, the 17th November 2025 trial date was vacated.

[8] On 27th November 2025, the respondent filed an application seeking to lift the statutory stay which would grant her leave to continue the Claim so as to enable the trial and determination of the issues ("the Application"). The Bank filed a notice of opposition to the respondent's application on 4th December 2025, in which it contended that the court has no jurisdiction to disapply section 117(2) and (3)(a) of the Act or to lift the stay imposed by section 117(3)(a) of the Act.

- [9] The parties in the matter exchanged legal submissions which make it clear that a critical issue between the parties centered around the Bank's contention that the statutory language of section 117(2) of the Act is clear and effect must be given to it. It is simply not permissible for this court to ignore clear statutory language and the plain meaning of the words used by the legislature.
- [10] On 22nd January 2026, the application came on for hearing and the learned judge granted the respondent's application to lift the stay for the purpose of determining liability only.
- [11] Pursuant to an order granting leave to appeal, the appellant filed a notice of appeal in which it sought to set aside the decision of the learned judge's decision on the sole ground that:
- "The learned judge erred in lifting of the moratorium imposed by section 117 of the International Banking Act 2016 (as amended) ("the Act") "permitting the claim to proceed to judgment" having failed to have regard or any proper regard to section 117(2) of the Act."
- [12] The respondent in its notice of opposition filed on 20th May 2026 opposes the appeal on the following grounds:
- (1) The appellant at the trial raised one issue before the judge, and that was that the judge lacked jurisdiction to lift the stay imposed by section 117 of the Act. The appellant raised no other issue and addressed no other issue despite invitation.
 - (2) The trial judge correctly invoked the jurisdiction to lift the stay imposed by section 117 of the Act and correctly applied the principles in considering her lifting the stay.
 - (3) The judge acting within the wide ambit of her discretion made no error of law.

The Judge's Reasoning

- [13] The learned judge's reasoning is set out in an Order dated 22nd January 2026 which contains the following critical recitals:

“AND UPON THE COURT seeking clarification from counsel for the respondent on whether the sole basis for the objection is based on the statutory bar as cited in his submissions and counsel indicating in the affirmative.

AND THE COURT advising counsel that section `117 of the international banking Act 206 has been amended by the Law Miscellaneous (Amendment) Act 2018 and providing counsel with a copy thereof.

AND UPON counsel reading the amendment and requesting an adjournment to provide further submissions on the amendment and potentially section 117(4) of the Act.

AND THE COURT considering and refusing the oral application for an adjournment and ruling as follows:

That the Defendant's erroneous statutory reliance was a result of a formal written submission, not a spontaneous mistake. Further, parties are expected to be fully prepared at the time of filing and that the Court cannot grant extra time simply to cure defective legal research. This matter has already been slowed by the defendant's administration and the resulting stay, and the Claimant is entitled to both fairness and finality. Adjournments are not a remedy for inadequate pleadings. The Court will therefore move forward with the hearing to lift the stay using the materials already submitted.”

- [14] At paragraphs 1 – 4 of the Order, the learned judge noted that the Bank's opposition to the application rested on a flawed interpretation of the law and was confined to that basis alone. However, the learned judge went on to consider all relevant factors governing the lifting of a stay. In exercising her discretion, the learned judge took into account that the respondent confirmed that the proceedings were confined strictly to the determination of liability, and that no enforcement action would be pursued within this forum. The judge observed that any enforcement steps, if necessary, would be addressed only after liability had been determined and through the appropriate administrative process. The learned judge also took into account the timing of the administration noting that the Claim was listed for trial and was brought to a halt on the actual day of trial as a consequence of administration proceedings one week before its scheduled hearing. She concluded that in those circumstances, permitting the Claim to proceed to judgment would not undermine the statutory stay or prejudice the administration of the defendant's affairs. After balancing the statutory objectives

of section 117 of the Act against the interests of justice and fairness, the learned judge was satisfied that this is an exceptional case in which a limited lifting of the stay was warranted.

The Parties' Submissions

The Bank's submissions

- [15] Counsel for the Bank directed the court to section 117(2) of the Act which she says makes clear that no person has any remedy against the Bank with respect to any claim while the appointment of the Official Administrator persists. The Bank submitted that it was not permissible for the learned judge to ignore the clear statutory language and the plain meaning of the words used in section 117(2) of the Act and “permit the claim to proceed to judgment” by lifting the stay.
- [16] Remarkably, the Bank accepts that the court has jurisdiction under section 117(3) of the Act to direct the continuation of an action, however, counsel for the Bank contends that the court cannot invoke this jurisdiction to prejudice or to otherwise undermine the “no remedy regime” expressly imposed by section 117(2) of the Act.
- [17] According to counsel, the words “without prejudice to” which appear in section 117(3) of the Act simply means ‘without affecting’³ and do not impact, in any way, the prohibition created by section 117(2) of the Act. It follows that a court can properly, without trespassing on section 117(2) of the Act, grant leave for proceedings to continue so that case management directions such as orders for standard disclosure, the appointment of an expert, and the filing of witness statements can be given. Such directions or incidental orders are not remedies and may be made in the continuation of proceedings.
- [18] Counsel for the Bank also pointed out that in the Claim, the respondent sought, among other remedies: “A Declaration that no monies are due by the Claimant to the Defendant under the Deed of Guarantee dated 16th October 2009, no demand having been made by the Defendant to the Claimant thereunder.” He

³ *Gentlis W. Goodwin v Hon. Winston B. Spencer et al.* Civil Appeal No. 25 of 2005 (delivered 14th March 2007, unreported) at [11], per Gordon JA.

submitted that this is a remedy that is determinative of liability but it is a remedy that cannot be granted at trial, or at all, as section 117(2) of the Act makes clear that: “On and during the appointment of an official Administrator, **no creditor, shareholder, depositor or any other person shall have any remedy against the licensed financial institution in respect of any claim.**” Emphasis added.

- [19] According to the appellant, the learned judge, in granting the respondent leave to continue her action against the Bank, in effect allowed the respondent to pursue and possibly obtain the remedies set out in the Claim contrary to the express prohibition set out in section 117(2) of the Act. He further submitted that the learned judge’s Order that “The application to lift the stay for the purpose of determining liability only is hereby granted” is an order contrary to the letter and spirit of section 117(2) of the Act.
- [20] The Bank therefore asserted that: (1) the learned judge had no discretion to grant the respondent leave to continue with the claim as this was, for all intents and purposes, barred by section 117(2) of the Act; and (2) even if there was a discretion to grant the respondent leave to continue with her claim against the Bank, such discretion was wrongly exercised as the learned judge failed to have any regard or any proper regard to section 117(2) of the Act.
- [21] The appellant relied on the authorities of **Thomas Ratnam v Thamboo Kumarasamy and Kumarasamy Ariamany d/o Kumarasa**⁴ and **Quillen v Harney, Westwood & Riegels (No 2)**⁵ in support of the proposition that a discretion that has been wrongfully exercised is liable to be set aside. Counsel for the Bank argued that discretion of the learned judge in the instant case was exercised on a wrong principle of law. It follows that the conclusion and decision reached by the learned judge was plainly wrong and outside the generous ambit within which factual reasoning and reasonable disagreement is possible. The Bank argues that there was a miscarriage of justice and asks this Court to set aside the order of the learned judge.

⁴ [1965] 1 WLR 8 at 11G-12A.

⁵ (1999) 58 WIR 147.

The Respondent's Submissions

- [22] In rebuttal, the respondent submitted that it was within the learned judge's powers to lift the stay and that the appellant's challenge to that jurisdiction is without foundation. In this regard, the respondent also submitted that the appellant's contention that the judge erred by lifting the stay is misconceived and proceeds on a selective reading of the statutory scheme that ignores the express terms of section 117(3) of the Act, which qualifies and supplements the prohibition in section 117(2) of the Act.
- [23] The respondent contended that the appellant's ground of appeal, properly understood, amounts to the proposition that section 117(2) of the Act is absolute and admits no judicial discretion. The respondent submitted further that the Bank's interpretation of section 117(2) of the Act is irreconcilable with the plain and unambiguous terms of section 117(3) of the Act. The respondent stated that to read subsection (2) as absolute would be to render subsection (3) entirely otiose, which is an impermissible approach to statutory construction.
- [24] According to the respondent, sections 117(2) and 117(3) of the Act must be read together as a coherent statutory scheme. While sections 117(2) establishes the general prohibition, sections 117(3) qualify it by providing the mechanism through which the court may, in an appropriate case, grant leave to proceed with an action. Therefore, the respondent posits that the stay is not absolute and the court retains a discretion to grant leave to commence or continue proceedings which it will readily do where appropriate.
- [25] In support of this submission, the respondent relied on **Re Atlantic Computer plc**⁶ which sets out the principles governing the exercise of the court's discretion to lift a stay which the learned judge was entitled to apply by analogy to the Act. First, the burden of proof lies with the applicant seeking to lift the stay. Second, permission will usually be given to a creditor seeking to exercise a proprietary right to repossess goods or property where doing so does not impede the purpose of the administration. Third, where the exercise of the right is likely to

⁶ [1992] 1 All ER 476.

impede the purposes of the administration, the court must carry out a balancing exercise in which great weight is given to a creditor with a proprietary interest, since an administration is not to be conducted for the benefit of unsecured creditors at the expense of creditors with a proprietary interest. Fourth, the risk of significant loss to the applicant is a good ground for lifting the stay but must be balanced against the potential loss to other creditors. Fifth, the court will assess a range of factors including the financial position of the company and the applicant, the obligations owed to the applicant, the administrator's proposals, the effect of allowing or refusing the application, the timing of the application, and the conduct of the parties. Sixth, in giving or refusing permission, the court may attach conditions and make directions.

- [26] The respondent submitted that having regard to those principles, the trial judge did consider whether granting leave would impede the purpose of the administration and balanced the interests of the administrator in assessing the liabilities and receivables of the appellant against the respondent's interest in having the issues before the court determined. This, the respondent argued, is precisely the balancing exercise that the applicable principles require.
- [27] The respondent further submitted that there were several features of this case which strongly supported the exercise of the judge's discretion in favour of lifting the stay. First, the timing of when official administration occurred - the Official Administrator was appointed on the cusp of trial, about one week before the trial was scheduled to begin. Second, the determination of the respondent's claim would assist, rather than impede, the administration. The conditions for the appointment of the official administrator are not undermined by a determination of the liabilities of the Bank or its obligations to third parties. Third, the stay does not afford the respondent any advantage over other creditors. Finally, the respondent submits that the appellant has made no meaningful challenge to the judge's exercise of her discretion and cannot simply challenge it on the basis that it has been exercised in a manner it does not like. The respondent therefore concludes that the appeal discloses no proper ground and ought to be set aside with costs to the respondent.

Analysis and Conclusion

The Legislative Framework

[28] The sole ground of appeal requires that this Court determine whether the learned judge erred in lifting the stay imposed by section 117 of the Act for the purpose of determining liability because she failed to have regard or any proper regard to section 117(2) of the Act. This requires the court to consider the interpretation and application of the relevant provisions of the Act.

[29] The general approach to statutory interpretation is well established. The English Courts have given reliable guidance on the basic approach on a number of occasions. Most recently, in **R (on the application of O (A Child)) v Secretary of State for the Home Department**,⁷ Lord Hodge DPSC, giving the leading judgment, set out the approach as follows:

“29. The courts in conducting statutory interpretation are “seeking the meaning of the words which Parliament used”: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid of Drem. More recently, Lord Nicholls of Birkenhead stated: “Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.” (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd ...*, 396). Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, 397: “Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament.”

30. ...

31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered.”

⁷ [2023] AC 255.

[30] To summarise: the role of the court when interpreting a statute is to ascertain the meaning that the legislature intended to convey through the legislation, often described as the “intention of Parliament”. This exercise is performed through an objective analysis of the words in the statute, having regard to their context, the content of the wider act, the purpose and the function that the provision exists to perform in pursuit of the legislation’s aims.

[31] In this appeal, the Act is the core legislative framework governing offshore and international banking business in Antigua and Barbuda. Part IX of the Act prescribes that the Financial Services Regulatory Commission may under its own authority and sole discretion, appoint an official administrator for a licensed financial institution where it is satisfied that an institution requires direct regulatory intervention and where any of the grounds set out in section 104 of the Act has been made out.⁸ Once appointed the Official Administrator takes over all duties, powers, and liabilities previously held by that bank’s directors.

[32] Where a bank becomes the subject of such action, there may be concerns that creditors will seek to take action against the company to satisfy any outstanding debt owed. As in the case of similar statutes, the Act provides for a statutory stay which affords legal protection for banks entering administration. In its original iteration, subsections 117(1) – (3) of the Act provided as follows:

“117. Moratorium and effect of official administration on proceedings

- (1) The Commission may impose a moratorium suspending some or all payments by a licensed financial institution in official administration, except payments to central clearing counterparties and to payment, settlement and clearing systems.
- (2) On and during the appointment of an official administrator, no creditor, shareholder, depositor or any other person shall have any remedy against the licensed financial institution in respect of any claim.
- (3) Without prejudice to the generality of subsection (2), no creditor, shareholder, depositor or any other person shall:

⁸ Section 104 of the International Banking Act 2016, No 6 of 2016.

- (a) commence or continue any action, execution or other proceedings; or
- (b) seek to enforce in any way any judgment or order obtained against the licensed financial institution or licensed financial holding company or its successor or the transferee of the whole or any part of any property, assets or undertaking of the licensed financial institution for the recovery of any claim or in respect of any other liability, until the termination of official administration in relation to the licensed financial institution or without the prior leave of the court, unless the court directs otherwise.”

[33] In 2018, the Antigua and Barbuda Legislature passed the **Law (Miscellaneous Amendments) Act 2018** (No. 26 of 2018) which *inter alia* amended section 117 of the Act by repealing subsection (3) thereof and replacing it as follows –

“(3) Without prejudice to the generality of subsection (2), no creditor, shareholder, depositor or any other person shall:

- (a) commence or continue any action, execution or other proceedings; or
- (b) seek to enforce in any way any judgment or order obtained against the licensed financial institution or licensed financial holding company or its successor or the transferee of the whole or any part of any property, assets or undertaking of the licensed financial institution for the recovery of any claim or in respect of any other liability,

Until the termination of official administration in relation to the licensed financial institution or without the prior leave of the court, unless the court directs otherwise.”

[34] The amendment, though slight, has a significant impact on the interpretation and application of that section. This amendment relocated the concluding sentence in the original subsection 117(3) of the Act from paragraph (b) to the end of the subsection, such that it now grammatically qualifies both paragraphs (a) and (b). The amendment now puts beyond doubt that, during official administration, the commencement or continuation of any action, execution or other proceedings, (as well as the enforcement of an existing judgment or order), is prohibited unless and until the administration is terminated, or the applicant secures the prior leave or direction of the court.

- [35] Properly construed, section 117(3) of the Act permits a court, during administration, to grant leave or otherwise direct that proceedings may be commenced or continued against the licensed financial institution. The Bank however, contends that the learned judge erred in lifting the stay because she failed to have regard or any proper regard to section 117(2) of the Act. Counsel for the Bank submitted that the statutory language of section 117(2) of the Act is clear and effect must be given to it so that it is simply not permissible for the learned judge to ignore clear statutory language and the plain meaning of words used by the legislature.
- [36] Section 117(2) of the Act establishes a broad statutory stay during the period of administration and an outright bar to any remedies against the licensed financial institution in respect of any claim. The issue which emerges from the Bank's submission is whether the broad prohibition in subsection 117(2) of the Act is absolute notwithstanding the provisions set out in subsection 117(3) of the Act. Section 117(3) of the Act commences with the well-used clause ***"without prejudice to the generality of subsection (2)"***. This phrase incorporates a drafting formula that narrows possible ambiguity about how earlier words in a provision are to be read. In legislative drafting this phrase operates as a legal safeguard used to ensure that a specific example does not limit the broad general rule that precedes it.
- [37] When utilised, the phrase preserves the broad scope of the earlier clause. The words that follow the phrase are intended to be additional, specific or exemplary measures that do not limit or reduce the general power/prohibition already established by the preceding text. The phrase also prevents a later, specific example or qualification from being interpreted as exhausting or restricting the general rule. Further, if a conflict of interpretation arises between the general provision and a subsequent specific provision, courts will prefer an interpretation that preserves the breadth of the general grant while giving effect to the specific clause in a compatible manner.

- [38] The phrase therefore serves as a drafting tool to preserve the breadth of general provisions while allowing for specific examples or powers to be enumerated. By way of illustration, in **Kellogg Brown & Root Holdings UK (Ltd) v Revenue and Customs Commissioners**,⁹ the phrase was used in tax legislation to clarify that the specific provisions regarding indirect control did not narrow the broader concept of control outlined in the preceding section. The court affirmed that the phrase supported a wide interpretation of the general provision, ensuring that subsequent subsections did not unduly restrict its application.
- [39] The Bank quite correctly concedes at paragraph 19 of its legal submission filed in support of this appeal that:
- “Under section 117(3) of the Act, the court may grant leave to continue proceedings....”
- [40] This concession acknowledges that the court has the jurisdiction to lift the statutory stay of proceedings prescribed in section 117(3) of the Act and signifies a departure from the posture adopted in the court below. However, the Bank contends that this jurisdiction is limited by section 117(2) of the Act in that while a court can properly, without trespassing on section 117(2) of the Act, grant leave for proceedings to continue so that case management directions (making of orders for standard disclosure, the appointment of an expert, and the filing of witness statements) can be given, section 117(2) of the Act deprives the court of jurisdiction to grant a remedy.
- [41] Having considered the scheme of the Act, legal principles applied by courts in construing statutory stays and applications to lift the same, I am satisfied that this contention is based on an incomplete and incorrect construction of the Act and is not a tenable one.
- [42] It is clear that there is a broad scope to the remedies which a creditor, shareholder, depositor or any other person may have or wish to pursue against a licensed financial institution which is claimed to be in breach of the provisions of the Act or any contractual or tortious obligations. By way of example this may

⁹ [2010] All ER (D) 271 (Feb).

include: enforcement of any security over the Bank's property, the repossessing of goods in its possession under any hire-purchase agreement or otherwise levying distress. Section 117(2) of the Act is drafted in wide, sweeping language.

By stating that no person "*shall have any remedy*", the legislature completely strips away all legal rights of recourse—whether through litigation, arbitration, administrative actions, or self-help remedies (like offsetting accounts or seizing collateral)—for the entire duration of the official administration. Not surprisingly, this is not exhaustive which perhaps explains why the Legislature would have opted to express the prohibition in such broad terms.

- [43] By employing the drafting formula "without prejudice to the foregoing" as a prelude to the proceeding section 117(3), the Legislature clearly intended to make clear that the explicit bans on: (a) starting lawsuits, or (b) enforcing judgments (b) are highlighted to avoid any doubt that they should be read as additional examples or specifics that are consistent with the broader scope of the remedies prohibited under section 117(2) of the Act and are not to be read as curtailing or limiting the same.
- [44] The formula 'without prejudice to the generality of subsection (2)' therefore prevents the reader from interpreting and concluding that – the commencement or continuation of any action, execution or other proceedings; or enforcement in any way of, any judgment or order obtained – is exhaustive, restricting, or reducing the general nature of the remedies which are prohibited under subsection 117(2) of the Act. In other words, section 117(3) provides explicit, concrete examples of what a prohibited "remedy" looks like (no starting of lawsuits, no continuing of ongoing lawsuits, no enforcing of past judgments). By using the legislative formula '*without prejudice to the generality of the section (2)*', the legislature guarantees that if a creditor, shareholder, depositor or any other person finds a loophole or a specific type of action that isn't explicitly listed in paragraphs (a) or (b) of section 117(3) of the Act, they are still blocked by the blanket restriction in section 117(2) of the Act.

- [45] There is, however, legislative tension between the two subsections in that section 117(2) of the Act says the remedy is prohibited '*On and during the appointment...*' while Section 117(3) of the Act adds an escape valve: '*...unless the court directs otherwise*' or by '*prior leave of the court.*' In statutory interpretation, because section 117(3) of the Act is explicitly tied back to section 117(2) of the Act via the 'without prejudice' mechanism, the court's power to grant 'leave' or 'direct otherwise' acts as the gatekeeper for both sections. If a creditor, shareholder, depositor or any other person successfully convinces a judge to grant 'leave' under section 117(3) of the Act to continue legal proceedings, that order effectively carves out a legal exception to the broad 'no remedy' stay in section 117(2) of the Act simultaneously.
- [46] The use of the formula therefore does not detract from the clear and unambiguous terms of section 117(3) of the Act. The stay is not permanent, and it is not entirely absolute. However, it can only be lifted under three specific conditions: (1) where the administration ends; (2) with prior leave of the court; or (3) where the court has so directed. It follows therefore that the court retains ultimate oversight and can step in to "direct otherwise" if the equity of the case demands it.
- [47] Contrary to what has been advanced by counsel for the Bank, a rational construction of section 117(2) and 117(3) of the Act cannot lead to the conclusion that where a court has determined that leave should be granted to a creditor, shareholder, depositor or other third party to commence or continue an action, that court is restricted to issuing a case management decision only and is precluded from pronouncing judgment or granting a remedy or, enforcing in any way, any judgment or order obtained.
- [48] In my judgment, the interpretation advocated by the Bank would lead to an absurd result – one which is wholly inconsistent with the scheme of the legislation, and modern case law. Having granted leave to commence or continue legal proceedings it would be incongruous for a court to be precluded from granting judgment and awarding remedies when it is clear that the court is also empowered to grant leave to enforce, in any way, any judgment or order

obtained against the entity or its successor or the transferee of the whole or any part of any property, assets or undertaking of the licensed financial institution for the recovery of any claim or in respect of any other liability.

[49] Generally, when a licensed financial institution enters into administration, the effect is to give rise to a stay that prevents a third party, such as a creditor, from instituting or continuing legal action against the entity or seeking to enforce, in any way, any judgment or order obtained against the entity or against its property. The statutory stay therefore affords a welcomed breathing space during which the entity can focus on rescue and rehabilitation. It provides entities with the benefit of preventing majority creditors and third parties from taking action against the entity or its assets during the administration process without first seeking permission from the court.

[50] These restrictions afforded by the stay are mandated to remain in place for as long as the entity is in administration but can be removed if permission is granted to a particular third party, creditor or depositor by a court or the court otherwise directs. This is consistent with the scheme of the Act which sets out similar language at:

“Section 117(5) - Where a stay has been lifted under subsection (4), no person shall take any steps to institute winding up, receivership, administration or any other related proceedings in relation to that licensed financial institution without the prior leave of the court unless the court directs otherwise

Section 117(6) - No creditor, shareholder, depositor or any other person shall: (a) commence or continue any claim, action, execution or other proceedings; or seek to enforce in any way any judgment or order obtained against the official administrator, in respect of any act, commission, claim, fact or matter connected with or arising out of the acts or omissions of the official administrator in respect of the licensed financial institution, until the termination of official administration in relation to the licensed financial institution without the prior leave of the court unless the court directs otherwise.”

...

Section 143(1)(c) - Upon and after appointment of a receiver: all legal proceedings against the licensed financial institution are stayed and a third party shall not exercise any right against the licensed financial

institution's assets without the prior leave of the court unless the court directs otherwise."

Unfortunately, in establishing this "carved-out" right, legislatures generally do not set out any guidance on the principles to be applied to determine when an application to lift the statutory stay should be granted. It is essentially left to the discretion of the courts. In the 1990 judgment of **In re Atlantic Computers Systems Plc**,¹⁰ the English Court of Appeal had to contend with the factors which should be considered when deciding whether to allow a lessor of land or the owner of goods to take back their property claimed due to non-payment of rentals during the administration process and whether to impose conditions on granting leave. At page 528 of that judgment, the court explained the aim of administration in the following terms:

"In contrast, an administration is intended to be only an interim and temporary regime. There is to be a breathing space while the company, under new management in the person of the administrator, seeks to achieve one or more of the purposes set out in section 8(3). There is a stay on the enforcement of debts and rights, proprietary and otherwise, against the company, to give the administrator time to formulate proposals..."

[51] After prefacing that they were merely guidelines, the English Court of Appeal then went on to make the following general observations regarding cases where leave is sought to exercise existing proprietary rights against a company in administration:

"(1) It is in every case for the person who seeks leave to make out a case for him to be given leave.

(2) The prohibition in section 11 (3) (c) and (d) is intended to assist the company, under the management of the administrator, to achieve the purpose for which the administration order was made. If granting leave to a lessor of land or the hirer of goods (a "lessor") to exercise his proprietary rights and re-possess his land or goods is unlikely to impede the achievement of that purpose, leave should normally be given.

(3) In other cases when a lessor seeks possession the court has to carry out a balancing exercise, balancing the legitimate interests of the lessor and the legitimate interests of the other creditors of the company (see Peter Gibson J. in *Royal Trust Bank v. Buchler* [1989] B.C.L.C. 130, 135)....It must be kept in mind that the exercise under section 11 is not

¹⁰ [1992] Ch 505; followed in *Innovate Logistics Limited (in administration) v Sunberry Properties Limited* [2008] EWCA Civ 1261.

a mechanical one; each case calls for an exercise in judicial judgment, in which the court seeks to give effect to the purpose of the statutory provisions, having regard to the parties' interests and all the circumstances of the case. As already noted, the purpose of the prohibition is to enable or assist the company to achieve the object for which the administration order was made. The purpose of the power to give leave is to enable the court to relax the prohibition where it would be inequitable for the prohibition to apply.

(4) In carrying out the balancing exercise great importance, or weight, is normally to be given to the proprietary interests of the lessor....

(5) Thus it will normally be a sufficient ground for the grant of leave if significant loss would be caused to the lessor by a refusal. For this purpose loss comprises any kind of financial loss, direct or indirect, including loss by reason of delay, and may extend to loss which is not financial. But if substantially greater loss would be caused to others by the grant of leave, or loss which is out of all proportion to the benefit which leave would confer on the lessor, that may outweigh the loss to the lessor caused by a refusal....

(6) In assessing these respective losses the court will have regard to matters such as: the financial position of the company, its ability to pay the rental arrears and the continuing rentals, the administrator's proposals, the period for which the administration order has already been in force and is expected to remain in force, the effect on the administration if leave were given, the effect on the applicant if leave were refused, the end result sought to be achieved by the administration, the prospects of that result being achieved, and the history of the administration so far.

(7) In considering these matters it will often be necessary to assess how probable the suggested consequences are. Thus, if loss to the applicant is virtually certain if leave is refused, and loss to others a remote possibility if leave is granted, that will be a powerful factor in favour of granting leave.

(8) This is not an exhaustive list. For example, the conduct of the parties may also be a material consideration in a particular case...

(9) The above considerations may be relevant not only to the decision whether leave should be granted or refused, but also to a decision to impose terms if leave is granted."¹¹

[52] It follows that, in exercising its discretion, a court must be mindful that the intention of the statutory prohibition is to assist the administrator to achieve the

¹¹ At pages 542 to 544 of the judgment.

purpose for which the administration was mandated. Where this intention is not likely to be impeded, the court ought to grant leave. Otherwise, the discretion of the court involves a balancing exercise between the likely loss which would be caused to an applicant if leave was refused; the effect of the granting of leave on the administration, including the likely loss which would be caused to the bank's other creditors; and the likelihood of any such losses occurring. Determining those losses will involve the court's consideration of a number of factors, including, but not limited to, the regulatory and/or financial position of the Bank; the administrator's proposals; the period for which the administration order has already been in force and is expected to remain in force; and the remit and the history of the administration and the actual impact which any potential remedy claimed could have on the administration.

[53] I have taken the liberty of recounting these principles for completeness but I am mindful that in this appeal, the Bank's sole complaint is that in exercising her discretion to grant leave to the respondent to continue proceedings, the learned judge failed to have regard or any proper regard to section 117(2) of the Act. Rule 62.5(8) of the **Civil Procedure Rules (Revised Edition) 2023** ("CPR") makes plain that an appellant may not rely on any ground not mentioned in the notice of appeal without the permission of the court. No permission has been sought or granted in this appeal. To the extent that the Bank has attempted to address matters which may fall outside of the remit of this ground of appeal, I am satisfied that it should not be permitted to do so.

[54] The Bank's argument invites the court to conclude that section 117(2) of the Act is absolute and admits no judicial discretion. For the reasons already indicated, I find that this construction is irreconcilable with the plain and unambiguous terms of section 117(3) of the Act. I further find that the interpretation commended by the Bank would render the leave provision in subsection (3) ineffectual, this could not have been the intention of the Legislature. It follows that the learned judge had jurisdiction to grant leave to continue the claim in the terms that she did.

[55] Having conducted the balancing exercise it was open to the judge to grant leave to continue the proceedings up until the point of enforcement (which was the relief sought by the respondent in the court below). On this construction, permitting the determination of liability does not defeat the stay and would not be inconsistent with the intention of the Legislature. The administration remains protected against enforcement unless the statutory requirements for lifting or qualifying the stay are satisfied.

[56] This appeal requires this Court to interrogate the exercise of the learned judge's discretion in lifting the statutory stay. In **Dufour and Others v Helenair Corporation Ltd**¹² this Court prescribed that an appeal against a judgment given by a judge in the exercise of a judicial discretion would not be allowed unless the appellate court was satisfied that, in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or by taking into account or being influenced by irrelevant factors and considerations; and that, as a result of the error or degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement was possible and might therefore be said to be clearly or blatantly wrong.

[57] For the reasons set out herein, I am not satisfied that the Bank has met the threshold in this appeal. In my judgment, the order made by the judge below is well reasoned and measured and there is no basis upon which this Court could or should interfere. Although set out in succinct terms, it is pellucid that the trial judge fully considered the relevant legislative framework. It is also clear that she balanced the interests of the administrator in assessing the Bank's position against the respondent's interest in having the issues before the court determined. Accordingly, the appeal should be dismissed.

Costs

[58] Consistent with the general rule prescribed under CPR Part 64.6, costs should follow the event. The respondent is therefore entitled to her costs of the appeal.

¹² (1996) 52 WIR 188.

Disposition

[59] For the reasons set out above, I make the following orders:

- (1) The appeal is dismissed.
- (2) The orders of the learned trial judge are affirmed.
- (3) Costs of the appeal are awarded to the respondents to be agreed within 21 days of the date of this order or if there is no agreement between the parties, to be assessed upon application to a judge or master of the High Court.

I concur.
P. Nicola Byer
Justice of Appeal

I concur.
Gertel Thom
Justice of Appeal [Ag.]

By the Court


Deputy Chief Registrar

