

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

SAINT CHRISTOPHER AND NEVIS

NEVHCVP2025/0012

BETWEEN:

BANK OF NEVIS INTERNATIONAL LIMITED

Appellant

and

SELECTA INSURANCE AND REINSURANCE COMPANY (CARIBBEAN) LTD.

Respondent

JAMES SIMPSON

Interested Party

Before:

The Hon. Mde. Vicki Ann Ellis
The Hon. Mde. Esco L. Henry
The Hon. Mr. Reginald Armour

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

Appearances:

Ms. Nadia Chiesa for the Appellant
Ms. Edisha Greene for the Respondent

2025: November 12;
2026: July 13.

Civil Appeal – Contempt of Court – Committal of officer of BONI a corporate body – Whether the appeal had become academic following the Simpson Appeal initiated by an officer of the corporate body - Corporate appellant's standing to appeal – Whether BONI has sufficient legal interest to maintain this appeal involving the same issues - Doctrine of stare decisis – Whether the Court is bound to follow and apply its decision in the Simpson Appeal under the doctrine of stare decisis - Mandatory procedural safeguards under CPR Part 53 – Reasonable opportunity to comply – Procedural fairness – Costs – Departure from general

rule that costs follow the event – Apportionment of appellate costs following related proceedings involving identical issues and a new party

The appellant, Bank of Nevis International Ltd. (“BONI”) appealed against a committal order by which its acting Chief Executive Officer, Mr. James Simpson, was committed to prison for seven days for BONI’s failure to comply with an order requiring payment of US\$3,017,909.88 into court. The application for the Committal Order was made by Selecta Insurance and Reinsurance Company (Caribbean) Ltd. (“Selecta”) who had in the High Court obtained a judgment in default of defence against BONI for damages to be assessed. BONI’s appeal to the Court of Appeal was not successful. The assessment hearing was scheduled for 18th December 2024. BONI applied to the Privy Council on 24th November 2024 for permission to appeal the Court of Appeal’s decision and for a stay of further proceedings. It applied for an adjournment of the assessment hearing pending determination of the leave application to the Court of Appeal.

The High Court made three successive orders dated 18th December 2024, 3rd February 2025 and 5th March 2025 for BONI to make the payment of US\$3,017,909.88 into court. BONI failed to do so. Consequently, by application filed on 24th March 2025, Selecta commenced committal proceedings for a) a declaration that BONI was in contempt of court due to its failure to comply with the payment orders dated 18th December 2024, 3rd February 2025 and 5th March 2025; and b) an order committing Mr. Simpson to prison under Part 53 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (“CPR”)** for BONI’s non-compliance with the Payment Order. By order dated 2nd May 2025, the court committed Mr. Simpson to prison for seven days due to BONI’s failure to comply with the Payment Order (“the Committal Order”). Mr. Simpson served the sentence. He filed an appeal against the Committal Order on 6th May 2025.

Prior to the hearing of BONI’s appeal, the Court of Appeal, in - the appeal brought by Mr. Simpson, (“the Simpson Appeal”) had set aside the Committal Order on the ground that the mandatory procedural requirements governing committal proceedings under CPR 53 had not been observed, particularly because the payment order was personally served only approximately one and one-half hours before the compliance deadline. Although 16 grounds of appeal were filed, the principal issues for determination were: 1) whether BONI retained a sufficient legal interest to pursue its appeal; 2) whether the appeal had become academic following the Simpson Appeal; 3) whether the Court was bound by its earlier decision under the doctrine of stare decisis; and 4) the appropriate consequential orders such as costs.

Held: allowing the appeal and awarding BONI its costs up to and including 17th October 2025 and awarding Selecta its costs after 17th October 2025 up to the date of delivery of this judgment; the respective costs to be assessed by a judge of the High Court, if not agreed within 21 days of today’s date, that:

1. BONI possessed a sufficient legal interest to maintain the appeal. Although the committal order imposed imprisonment upon Mr. Simpson only, the proceedings were founded upon findings that BONI had failed to comply with the Payment Order. BONI was therefore directly affected by the findings underpinning the Committal

Order and was not merely seeking to challenge judicial reasoning divorced from operative relief.

2. An appeal lies against the order of the court and not merely against the reasons for judgment. BONI's appeal, when instituted, challenged the operative Committal Order itself and therefore fell within the appellate jurisdiction notwithstanding that the order was directed to its officer personally rather than to BONI. The appeal was not rendered academic merely because the Committal Order had already been set aside in the Simpson Appeal. While the earlier judgment removed the need for a second order setting aside the Committal Order, BONI remained entitled to a determination of the legal consequences arising from that earlier decision and to appropriate consequential relief.

Lake v. Lake [1955] P. 336 considered; **Microsoft Corporation v Vadem Ltd.** BVIHCVAP2013/0007 (delivered 8th August 2013, unreported) considered; and **Anselm Caines v Janette Nisbett-Meloney** NEVHCVAP2024/0004 (delivered 14th November 2024, unreported) considered.

3. The Court was bound by its own earlier decision in the Simpson Appeal pursuant to the doctrine of *stare decisis*. The doctrine of *stare decisis* is a long-standing, fundamental and well settled legal principle that requires courts of law to follow legal precedents from superior courts or their own prior decisions, when making decisions in similar cases, except where a) two previous conflicting decisions exist, b) the prior decision was overruled by the apex court, which would be the Privy Council in the case of the Federation of Saint Christopher and Nevis; or c) the previous decision was given *per incuriam*. None of the recognised exceptions arose. The legal issues, statutory provisions, factual chronology and procedural defects were materially identical.

Young v Bristol Aeroplane Co Ltd. [1944] K.B. 718 applied.

4. Once this Court determined in the Simpson Appeal that the Committal Order was procured in proceedings that did not comply with the mandatory procedural safeguards under CPR Part 53, no justifiable basis exists on which the Committal Order can continue to stand in relation to BONI. The Court being bound by the doctrine of *stare decisis*, adopted and applied the reasoning in the Simpson Appeal rather than undertaking a fresh reconsideration of the merits. The invalidity of the committal proceedings had already been authoritatively determined and those conclusions applied equally to BONI's appeal. The Court therefore adopts and applies in this appeal its previous reasoning that strict compliance with CPR Part 53 is a mandatory precondition to the lawful exercise of the court's committal jurisdiction. The requirements contained in rules 53.3 and 53.4 of the CPR concerning personal service, endorsement of the prescribed penal notice on the payment order and service sufficiently in advance to afford a reasonable opportunity for compliance are substantive safeguards protecting personal liberty and are not mere technicalities. Service of the payment order approximately one and one-half hours before expiry of the compliance period did not afford BONI or its Chief

Executive Officer a reasonable opportunity to comply. The resulting committal proceedings were procedurally unfair and fundamentally defective, rendering the Committal Order unsustainable. No further order setting aside the Committal Order was required, that relief having already been granted in the Simpson Appeal.

Rules 53.3 and 53.4 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** applied; **James Simpson v Selecta** NEVHCVAP2025/0010 (delivered 17th October 2025, unreported) applied; and **Young v Bristol Aeroplane Co Ltd**. [1944] K.B. 718 applied.

5. Although BONI was entitled to institute and prosecute the appeal while the Committal Order remained extant, the position changed materially upon the delivery of the judgment in the Simpson Appeal on 17th October 2025, in which the Committal Order was set aside and the governing legal principles authoritatively determined. Applying CPR 64.6 in exercising its discretion as to costs, the Court departed from the general rule that costs follow the event. BONI was awarded its costs of the appeal incurred up to and including 17th October 2025, those costs having been reasonably incurred in pursuing a viable appeal. Selecta was awarded its costs incurred thereafter until the date of delivery of judgment because the continuation of the appeal after that date became unnecessary once the substantive relief had already been obtained in the Simpson Appeal. The respective costs were ordered to be assessed if not agreed.

Rule 64.6 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** considered; **Webster Dyrud Mitchell (A Partnership) et al v Jenny Lindsay** AXAHCVAP2017/0001 (delivered 20th September 2021, unreported) considered.

JUDGMENT

Introduction

- [1] **HENRY JA:** This interlocutory appeal filed on 12th May 2025 by Bank of Nevis International Limited (“BONI” or the “Appellant”) concerns the propriety of a committal order made against BONI’s acting Chief Executive Officer (“CEO”) and one of its directors Mr. James Simpson. It also raises the question whether BONI has a sufficient interest in prosecuting this appeal where the committal order was already set aside by this Court in a separate appeal brought by Mr. Simpson (the “Simpson Appeal”). For this reason, due to its close connection with the Simpson Appeal, this appeal cannot be considered in isolation.

- [2] By judgment delivered on 17th October 2025, this Court allowed the Simpson Appeal on the ground that the statutory requirements governing committal proceedings had not been observed and the procedure was fundamentally unfair. The Court ruled that the learned judge had erred in law in making that order. Consequently, the resultant committal order could not stand.
- [3] BONI appealed against the 2nd May 2025 Order committing Mr. James Simpson to prison, for seven (7) days for BONI's failure to comply with the court's 5th March 2025 order to pay \$3,017,909.88 into court by 12th March 2025 (the "Committal Order"). The Committal Order was made pursuant to an application filed on 24th March 2025 by the respondent Selecta Insurance and Reinsurance Company (Caribbean) Limited ("Selecta" or the "Respondent") under rule 53.2 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 ("CPR")**.

Background

- [4] The factual matrix is not in dispute. By order dated 2nd May 2023, Selecta obtained judgment in default of defence against BONI with damages to be assessed subsequently. BONI's appeal against the default judgment was dismissed. Selecta subsequently filed its application for assessment of damages. The assessment hearing was scheduled for 18th December 2024.
- [5] Before the assessment hearing, BONI applied¹ to the Privy Council for permission to appeal the Court of Appeal's decision and for a stay of further proceedings. It applied in the High Court² for an adjournment of the assessment hearing pending determination of the leave application.
- [6] On 18th December 2024 the judge ordered BONI to pay US\$3,017,909.88 into court

¹ On November 24th 2024.

² On 16th December 2024.

by 3rd January 2025. The hearing of the application for assessment was adjourned to 3rd February 2025.

[7] In the intervening period, BONI failed to comply with the order to pay the monies into court. Instead, on 3rd January 2025 BONI applied to vary the payment in order. On 3rd February 2025, the judge extended the time for payment until 17th February 2025. He adjourned consideration of the assessment of damages application, the adjournment application and all other applications (the “pending applications”) to 5th March 2025. Yet again BONI did not make the payment into court.

[8] Thereafter, Selecta applied on 3rd March 2025, under CPR Part 53 for an order a) directing BONI to pay the same sum into Court by 4.00 p.m. on 12th March 2025, and b) requested that a penal notice be attached, directed to BONI’s directors - James Simpson and Stephen Agbeyegbe³ and c) for a copy of the order to be served on BONI’s CEO Mr. James Simpson (the “Payment Application”).⁴ The application proceeded on the basis that BONI had repeatedly failed to comply with the previous payment orders.

[9] The court granted the Payment Application on 5th March 2025 in the following terms:

- “(1) The Respondent is ordered to pay the sum of US\$3,017,909.88 into the Nevis High Court by 4 p.m. on 12th March 2025.
- (2) This Order shall be served personally on James Simpson, the Chief Executive Officer and Stephen Agbeyegbe Chief Operations Officer of the Respondent.
- (3) Costs are awarded to the Applicant in the sum of \$1,500.00.
- (4) The hearing of the Claimant’s assessment of damages is fixed for hearing on 18th March 2025 via zoom at 8:20 a.m.” (the “Payment Order”).⁵

³ Who was also BONI’s chief operations officer.

⁴ At pgs. 77 – 80 of the Electronic Hearing Bundle filed on 2nd July 2025.

⁵ At pgs. 107 – 109 of the Electronic Hearing Bundle filed on 2nd July 2025.

[10] Endorsed on the Payment Order were identical penal notices as prescribed by CPR 53.4(b), directed separately at Messrs. Simpson and Agbeyegbe warning that contempt proceedings (leading to imprisonment or sequestration of their property) may be commenced against them respectively for non-compliance. The penal notice directed to Mr. Simpson stated:

“NOTICE: If the Bank of Nevis International Limited fails to comply with the terms of this order, proceedings may be commenced for contempt of court and you James S. Simpson may be liable to be imprisoned or to have an order of sequestration made in respect of your property.”⁶

[11] The Payment Order was served on Mr. Simpson personally on Wednesday, 12th March 2025 at approximately 2:34 pm, less than two hours before the expiry of the deadline for compliance.⁷ By that time, commercial banking operations had ceased for the day. Not surprisingly, before the learned judge and in the Simpson Appeal, this timing factor assumed great significance.

[12] At the adjourned hearing on 20th March 2025, case management directions were issued in respect of a pending application. In addition, Selecta was directed to file any committal and/or sequestration applications by 27th March 2025.

[13] Yet again, BONI did not make the payment. As a result, Selecta commenced committal proceedings on 24th March 2025. It sought a) a declaration that BONI was in contempt of court due to its failure to comply with the payment orders dated 18th December 2024, 3rd February 2025 and 5th March 2025; and b) an order committing Mr. Simpson to prison under CPR 53 for BONI's non-compliance with the Payment Order.⁸

[14] In his affidavit filed on 1st April 2025 Mr. Simpson acknowledged that he was served with the Payment Order on 12th March 2025. Among other things, he disputed that

⁶ At page 108 of the Electronic Hearing Bundle filed on 2nd July 2025.

⁷ See affidavit of service of Junior Bailiff Philroy Walters, dated and filed on 14th March 2025; at pgs. 76-77 of the Record of Appeal.

⁸ At pgs. 124 – 127 of the Electronic Hearing Bundle filed on 2nd July 2025.

BONI refused to pay the monies into court and asserted instead that BONI had been unable to do so despite its best efforts to comply. He averred further that the Committal Application was premature because it had not been served on him seven clear days before the hearing date as required by the CPR Part 53.

[15] The Committal Application was heard on 2nd May 2025. At that hearing, Mr. Simpson gave evidence and he was cross-examined. At the end of the hearing, the learned judge committed him to prison for seven days because of BONI's failure to comply with the Payment Order.⁹ Mr. Simpson served the sentence.

[16] Written reasons for the learned judge's decision were not delivered contemporaneously, although dated 2nd May 2025. They were issued on 21st May 2025, the same day the Simpson Appeal¹⁰ was heard and after the hearing had concluded. In summary, the judge concluded that BONI had persistently failed to comply with successive payment orders and had demonstrated no genuine ability to do so. Furthermore, Mr. Simpson had taken insufficient steps to secure compliance with the Payment Order.

[17] The learned judge reasoned:

“[63] In the absence of any undertaking and no evidence from BONI of any real effort to comply with the payment in order this court's hands were tied. BONI had clearly disobeyed the order and there was no evidence of when compliance was forthcoming. No letter of guarantee from a bank or any financial instrument or even documentation confirming that BONI was able to even comply was presented to this court.

...

[65] In those circumstances, I was satisfied that it is necessary to commit Mr. Simpson to HM Prison for 7 days for BONI's non-compliance with the order for payment in.”¹¹

⁹ Committal Order at pgs. 165 – 166 of the Electronic Hearing Bundle filed on 2nd July 2025.

¹⁰ NEVHCVAP2025/0010 James Simpson v Selecta Insurance and Reinsurance (Caribbean) Limited (delivered 17th October 2025, unreported).

¹¹ At paragraphs [63] and [65] of the judgment, located at pages 169-178 of the Electronic Hearing Bundle filed on 2nd July 2025.

- [18] By Notice of Appeal filed on 6th May 2025 in civil appeal number NEVHCVP2025/0010 **James Simpson v Selecta Insurance and Reinsurance (Caribbean) Limited**, Mr. Simpson appealed against the Committal Order. He challenged the procedures adopted by the learned judge in holding him in contempt of court and committing him to prison. By judgment delivered on 17th October 2025, this Court held that the mandatory procedural requirements governing committal proceedings had not been satisfied, particularly the requirement that the order be served sufficiently early to afford a reasonable opportunity for compliance. The Court therefore set aside the Committal Order.
- [19] Being dissatisfied with the Committal Order, BONI advanced sixteen grounds of appeal which raise substantially the same issues as those in the Simpson Appeal. However, in legal arguments, Selecta raised another discrete concern that was not present in the Simpson Appeal. Selecta contended that BONI did not have a sufficient interest in pursuing the appeal and was not entitled to do so because the Committal Order was directed solely at Mr. Simpson.
- [20] Before this Court, learned counsel for BONI accepted that the sixteen grounds of appeal fell into two broad categories. Firstly, that the committal proceedings were fundamentally defective because the mandatory requirements of CPR 53 were not observed. In particular, that the Payment Order was served on Mr. Simpson too close to the compliance deadline, depriving he and BONI of any realistic opportunity to comply before it expired. Secondly, BONI contended that notwithstanding the decision in the Simpson Appeal, it retained a sufficient legal interest to pursue its own appeal because the Committal Order arose directly from findings by the Court concerning its conduct. Moreover, the legal and reputational consequences of the Committal Order persist.
- [21] Selecta refuted those contentions. It argued that the issues concerning procedural fairness have already been conclusively determined in the Simpson Appeal. Further, in any event, BONI lacks the independent right to appeal because the

Committal Order granted no relief against it and imposed no obligation on it. Therefore, the appeal was academic and ought to be dismissed on that basis.

[22] It is self-evident that save for the question of whether BONI has an appealable interest separate from Mr. Simpson's, this appeal raises identical issues to those in the Simpson Appeal. The parties were each invited to indicate whether it was necessary, desirable or appropriate in the circumstances to proceed with the appeal. They both submitted that they wished to have the appeal determined on its merits and commended their respective written submissions for the Court's consideration.

[23] At the end of the hearing, the parties were invited to file and exchange submissions on or before 27th November 2025 on two issues (which they did), namely:

- (1) "Given that the interlocutory appeal filed on 20th June 2025 sought to challenge the decision made by the learned judge in the court below to commit Mr. James Simpson for a period of 7 days, and given that the order made no specific declarations or declaratory relief in respect of BONI, counsel is invited to address the court on the viability of the appeal in light of the authorities which address the legal principle that appeals are against orders of the court and not against findings and observations made by the judge; and
- (2) The appropriate costs orders where the Court finds that the appeal should be dismissed as disclosing no reasonable cause or alternatively the appropriate costs order to be made where the Court determined that the appeal should not be dismissed."

Issues

[24] Four issues arise for consideration:

- (1) Whether BONI has a sufficient legal interest to maintain this appeal ("the sufficient interest point").
- (2) Whether the Court is bound to follow and apply its decision in the Simpson Appeal ("the stare decisis point").

(3) If so, what effect does that decision have on the present appeal (“the Simpson Appeal effect point”).

(4) What if any, consequential orders ought to be made (“the consequential orders point”).

BONI’s Submissions

[25] BONI submitted that contempt proceedings are quasi-criminal in nature and require strict adherence to procedural safeguards. It argued that the judge committed fundamental procedural errors during the committal proceedings and by making the Committal Order, by not ensuring compliance with the mandatory requirements of CPR Part 53, particularly CPR 53.4, governing committal orders against officers of corporate bodies. It was submitted that the proceedings and Committal Order both infringed principles of natural justice and procedural fairness in two principal respects.

[26] First, service of the Payment Order on 12th March 2025, merely an hour and a half before the compliance deadline did not afford BONI or Mr. Simpson sufficient time for compliance and this rendered the committal proceedings procedurally unfair. BONI further argued that under CPR 53.4, a committal order cannot be made against an officer of a body corporate unless a) the order requiring the judgment debtor body corporate to perform an act within a specified time is personally served on the officer; b) the order bears the prescribed penal notice in the terms set out in CPR 53.4(b); and c) service occurs sufficiently in advance to provide the officer of the corporate body with a reasonable opportunity to comply before the deadline expires. Counsel submitted that imprisonment for contempt could not lawfully be ordered absent strict compliance with those procedural requirements.

[27] Secondly, BONI contended that the Committal Order contains no finding that it was in contempt of court. BONI argued that the judge erred in making the Committal Order without first making such a finding. Reliance was placed on **In re**

Bramblevale Ltd.¹², **Attorney General for Tuvalu v Philatelic Distribution Corp. Ltd.**¹³, **Emmerson International Corporation v Renova Holding Ltd.**¹⁴ and **Navigator Equities Ltd. and another v Deripaska**¹⁵. BONI also relied on the Court's reasoning in the Simpson Appeal, submitting that the procedural defects identified there infect this appeal to like effect.

[28] BONI further contended that the appeal remains justiciable despite its CEO's success in the Simpson Appeal and notwithstanding that the Committal Order was directed solely against Mr. Simpson. It submitted that it had the requisite standing because it was a party to the underlying proceedings and the one against whom the payment orders were made; the committal proceedings arose directly from allegations of its non-compliance with those payment orders; Mr. Simpson was one of its directors and his imprisonment for the alleged breaches affected and continue to affect its own legal and commercial interests; and the Committal Order continues to adversely impact its reputation as a regulated financial institution.

[29] Additionally, BONI argued that notwithstanding Mr. Simpson's separate appeal against the Committal Order, this did not preclude its own appeal. It noted that the court initially directed both appeals to be heard by the same panel and ordered that the Simpson Appeal be re-opened to receive further submissions relevant to BONI's Appeal, although that order was later set aside following the judgment in the Simpson Appeal.

[30] Relying on **Lake v. Lake**¹⁶, **Microsoft Corporation v Vadem Ltd.**¹⁷ and **Anselm Caines v Janette Nisbett-Meloney**,¹⁸ BONI accepted the established principle that an appeal lies against an order rather than the reasons for judgment and a

¹² [1970] Ch. 128.

¹³ [1990] 1 WLR 926.

¹⁴ BVIHCVAP2019/0001 (delivered 7th July 2023, unreported).

¹⁵ [2022] 1 WLR 3656.

¹⁶ [1955] P. 336

¹⁷ BVIHCVAP2013/0007 (delivered 8th August 2013, unreported).

¹⁸ NEVHCVAP2024/0004 (delivered 14th November 2024, unreported).

successful party who seeks to appeal a judgment or order made in his favour, will not be permitted to impugn the reasoning of the judge to score technical points which have no effect on the judgment or order. BONI argued however, that unlike the unsuccessful appellant in **Anselm Caines**, it is not merely challenging the judge's reasoning or seeking to score technical points not affecting the order, but instead its appeal is against the Committal Order.

- [31] Lastly, it was submitted that the success of the Simpson Appeal did not extinguish BONI's appeal but merely raised the question whether it had become moot. It maintained that this was not an academic appeal. Further, it was submitted that BONI remained entitled to a determination of its appeal especially in light of the significant legal and reputational consequences arising from the Committal Order and it should therefore not be penalized for pursuing its appeal.

Selecta's Submissions

- [32] Selecta accepted that the Committal Order challenged in this appeal was the same order set aside in the Simpson Appeal. It nevertheless argued that BONI's appeal was not viable because the Committal Order was directed exclusively against Mr. Simpson and no operative order was made against BONI that could ground an appeal. The appeal was therefore academic, without merit and ought to be dismissed.
- [33] Relying on **Ainsbury v Millington**¹⁹, **Sun Life Assurance Co. of Canada v Jervis**²⁰, **Young v Bristol Aeroplane Co Ltd.**²¹ and **Neurim Pharmaceuticals (1991) Ltd. and another v Generics (UK) Ltd. and another**,²² Selecta submitted that appellate review does not concern the judge's reasons for the determination but rather the result or outcome as expressed in the order itself. It contended that contrary to the referenced established principle, the present appeal seeks in

¹⁹ [1987] 1 WLR 379.

²⁰ [1943] 2 All ER 425.

²¹ [19464] K.B. 718.

²² [2022] EWCA Civ. 699.

substance to challenge findings and reasoning rather than an order affecting BONI's legal rights.

- [34] Citing **Emmerson International Corporation v Viktor Vekselberg and others**²³ Selecta invoked the principle that the court does not act in vain. It was submitted that accordingly, the Court should not entertain the appeal or make orders that serve no practical purpose.

Discussion

- [35] The circumstances under which this appeal was heard are unusual by reason that by then the Committal Order which is at the heart of the appeal had already been set aside in the Simpson Appeal. In my opinion, that development did not automatically dispose of the present appeal. This Court now has to determine whether BONI retains a sufficient legal interest to prosecute the appeal and, if so, whether any issue is left to be resolved notwithstanding the decision in the Simpson Appeal. In answering those questions, it is necessary to decide whether BONI can be said to have been aggrieved by the Committal Order; and whether the appeal has been rendered academic by the decision in the Simpson Appeal. I will consider those two points in turn.

Sufficient Interest Point

- [36] Selecta's contention that BONI cannot maintain this appeal because no operative order was made against it, and it therefore has no appealable interest are jurisdictional objections. Both parties accept that it is well established that an appeal lies only at the instance of a litigant whose legal interest has been adversely affected by the order being appealed against. It is settled law that courts do not entertain appeals brought by persons who seek only to correct judicial reasoning or obtain declarations that are unconnected to any practical legal consequence. The underlying rationale is obvious. Simply stated, the principle serves among other things, to prevent successful litigants from appealing for the sole purpose of

²³ BVIHCMAP2019/0001 (delivered 7th July 2023, unreported).

correcting judicial reasoning and it preserves the limits of the jurisdiction exercised by appellate courts.

[37] In **Anselm Caines v Jannette Nisbett-Meloney** this Court noted that the **Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act**²⁴ provides at section 33(1)(b) that appeals lie to this Court ‘from any judgment or order of the High Court’.²⁵ Citing **Lake v Lake** which considered a similarly worded provision of the **UK Judicature Act, 1925**²⁶, the court opined that ‘[t]he underlying principle is that “a judgment or order against which an appeal could be brought ... meant the formal judgment or order which was drawn up and disposed of the proceedings [and] ... the right of appeal did not extend to a finding or statement in the reasons given by the court for the conclusion reached.”²⁷ This guiding principle is equally applicable to the instant appeal. However, it must be applied by reference to the substance of the case before the Court and not as a matter of form.

[38] The circumstances have already been described earlier in this decision. It bears summarizing the salient features. The Committal Order arose directly out of allegations that BONI failed to obey successive orders to pay over three million dollars into court. It follows that the alleged contempt was BONI’s. Mr. Simpson was found guilty of contempt and imprisoned simply because he was BONI’s acting CEO at the material times and because as a director under CPR 53 he was one of the persons charged with responsibility for securing BONI’s compliance with the Payment Order.

[39] It follows ineluctably that the committal proceedings necessarily involved judicial findings regarding BONI’s conduct. Indeed, the judge found that BONI had persistently failed to comply with the court’s orders and had not established any

²⁴ Revised Laws of Saint Christopher and Nevis, 2009.

²⁵ At para. [44].

²⁶ Section 27.

²⁷ At held point no. (2) on p. 336 at 337.

genuine inability to do so. Those findings created the factual framework that underpinned the Committal Order whereby Mr. Simpson was sentenced. This inescapable connection meant that BONI was no mere spectator to the committal proceedings but an integral player. BONI was the judgment debtor against whom the Payment Order was made, the alleged contemnor whose conduct was examined during the hearing and the corporate body whose failure to comply with the court's order provided the only basis on which its CEO could be and was deprived of his liberty.

[40] Having examined those circumstances, I am satisfied that BONI had a sufficient legal interest in the committal proceedings and the outcome to invoke the Court's appellate jurisdiction by filing its appeal in May 2025. Moreover, BONI's appeal when filed in May 2025 was clearly launched against the Committal Order and not at the judge's reasons for his decision. The fact that the Committal Order has been set aside does not transform BONI's appeal retrospectively into a forbidden appeal against reasons. Instead, it raises the question of whether BONI may obtain any effective relief on the strength of its appeal.

[41] I turn next to consider what, if any, interest of BONI's survived the determination of the Simpson Appeal. This brings me to the legal doctrine of *stare decisis*.

Stare Decisis Point

[42] '*Stare decisis*' is a Latin term meaning 'to stand by things decided'. The doctrine of *stare decisis* is a long-standing, fundamental and well settled legal principle that requires courts of law to follow legal precedents from superior courts or their own prior decisions, when making decisions in similar cases, except where a) two previous conflicting decisions exist, b) the prior decision was overruled by the apex court (i.e. the Privy Council in the case of the Federation of Saint Christopher and Nevis), or c) the previous decision was given per incuriam.

[43] The doctrine was adumbrated as follows by the English Court of Appeal in **Young v Bristol Aeroplane**:

“... this court is bound to follow previous decisions of its own as well as those of courts of co-ordinate jurisdiction. The only exceptions to this rule (two of them apparent only) are those ... which ... we here summarize: (1) The court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (2) The court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords. (3) The court is not bound to follow a decision of its own if it is satisfied that the decision was given per incuriam.”²⁸ (Emphasis added)

[44] None of the three mentioned exceptions arise in the circumstances of this case. Mr. Simpson’s success in his appeal altered fundamentally the context within which the instant appeal is to be determined. By allowing the Simpson Appeal and setting aside the Committal Order, now under challenge by BONI, that order ceased to exist. Accordingly, the practical utility of this appeal is significantly diminished because a second setting aside order in this appeal would be duplicative of that made in the earlier appeal. This appeal is however not bereft of legal significance as a result.

[45] The reality is that when BONI launched its appeal in May 2025, the Committal Order still existed. BONI was therefore entitled to challenge it as a litigant with sufficient legal interest in the committal proceedings. That entitlement was not extinguished by Mr. Simpson’s subsequent success in his appeal. What it does however is to change or limit the issues that require determination in this appeal.

[46] Consequently, in determining this appeal, the Court must remain mindful that although the primary relief sought in the appeal has already been granted in another appeal, there are legal issues remaining about the effect of the decision in the Simpson Appeal on BONI’s appeal, and by extension what consequential orders may be appropriate. In my view therefore, this appeal is not academic.

²⁸ At pgs. 729 – 730.

[47] Learned counsel in this appeal properly acknowledged that the legal issues substantially mirror those which arose for consideration in the Simpson Appeal. The judgment in that case is therefore a prior decision of this Court regarding the same legal issues arising from the committal proceedings in the High Court. That judgment therefore constitutes more than just persuasive authority. There is no subsequent decision of the Privy Council from that decision. Returning momentarily to the *stare decisis* doctrine, it is readily apparent therefore that this Court is bound to apply the legal conclusions reached in the Simpson Appeal, unless precluded from doing so because of the existence of some relevant factual distinction. I discern no such distinction.

[48] In the Simpson Appeal, the Court considered CPR 53.4 and 53.5(2) the material parts of which respectively provide that:

“Committal order or sequestration order against officer of body corporate

53.4 Subject to rule 53.5, the court may not make a committal order or a sequestration order against an officer of a body corporate unless:

- (1) a copy of the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the officer against whom the order is sought;
- (2) at the time the order was served it was endorsed with a notice in the following terms:

“NOTICE: If [name of body corporate] fails to comply with the terms of this order proceedings may be commenced for contempt of court and you [name of officer] may be liable to be imprisoned or to have an order of sequestration made in respect of your property.”; and

- (3) if the order required the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.”

“Making committal order or sequestration order when judgment or order not served

53.5 (1) ...

(2) If the order requires the judgment debtor not to do an act, the court may make a committal order or sequestration order only if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the order by being –

(a) notified of the terms of the order by post, telephone, electronic communication or otherwise; or

(b) present when the order was made.” (Emphasis added)

[49] From the factual matrix it is evident that the relevant chronology is identical, the Committal Order in both appeals are the same, identical statutory provisions were considered and are applicable, the procedural defects relied on by Mr. Simpson and BONI are the same, and the evidence as to the timing of the service of the Payment Order is the same. The sole divergence is that Mr. Simpson was the appellant in the earlier appeal, in his personal capacity, while BONI appeals as a corporate body in the present appeal. What is clear is that this difference does not affect the legal reasoning that led to the setting aside of the Committal Order.

[50] In the Simpson Appeal, Mr. Simpson’s principal complaint was that the Committal Order was procedurally unfair and should not have been made. He contended that the learned judge erred by not ensuring compliance with the procedural requirements outlined in Part 53 of the CPR and in particular rule 53.4.

[51] By its judgment in the Simpson Appeal, this Court held, among other things, that:

(1) rule 53.4(c) of the CPR applies to service on a judgment debtor that is a body corporate of an order which is the subject of a rule 53.2 application;

- (2) rule 53.3(a) of the CPR stipulates that such an order with a penal notice attached must be i) served personally on the body corporate judgment debtor; and ii) within sufficient time to give the judgment debtor a reasonable opportunity to do the act, before the specified date and time expires;
- (3) rule 53.4(a) mandates that the order endorsed with the penal notice must be served on the officer named in the order who is the subject of a penal notice directed to him or her under rule 53.4(a);
- (4) If service is properly and timeously effected on the body corporate judgment debtor and on the named officer pursuant to rules 53.3(a) and 53.4(a) the named officer is required to take such steps within the power of the office that he/she holds in the body corporate to comply with the order, failing which he/she becomes liable to be committed for contempt of court; and
- (5) subject to CPR rule 53.5(2) if the mandatory requirements for service on the judgment debtor body corporate and its named officer have been complied with, the court may find the body corporate and its named officer in contempt in the absence of any reasonable explanations or reasons for their non-compliance and may in the exercise of its discretion, make a committal order against the named officer.²⁹
(Emphasis supplied)

[52] Applying CPR rule 53.3, the Court held further that:

- (1) If the order mandating compliance is not made in the presence of the named officer, is i) not served personally on him/her, ii) within sufficient time to afford him/her adequate time to take steps to ensure compliance by the judgment debtor with the terms of the order and iii) does not

²⁹ Extracted from Held point No. 2 of the Judgment.

contain a penal notice directed at him/her; this is an important factor to be considered by the court against taking the drastic step of ordering the imprisonment of that officer for contempt of court; and

- (2) If the foregoing three conditions³⁰ are not satisfied the court should not make a committal order and if the order was not served within sufficient time to permit reasonable compliance with it, the court ought not to make a committal order.³¹

[53] Ultimately, citing **Ronson Products Ltd v Ronson Furniture Ltd**³² the Court held that in all the circumstances Mr. Simpson was prejudiced as contemnor by the requirement for payment by BONI into court of a large sum of money stemming from the very late service of the Payment Order on him, a mere 1.5 hours before the mandatory stipulated time for its compliance. It ruled that this was clearly unfair and an injustice to him, charged as he was, with ensuring BONI's compliance with the said order under peril of his imprisonment for contempt.

[54] Significantly, on the question of whether the court made a finding that BONI was guilty of contempt, the Court opined at paragraph [61]:

“At paragraph 54, the learned judge found that BONI was guilty of contempt. Paragraph 54 states-

‘To my mind, if you are ordered to comply and fail to comply for several months and do not adduce any or any sufficient documents of your efforts to comply then one inescapable inference is that you are wilfully refusing to comply. Disobedience means a refusal or neglect to obey. BONI has neglected to comply with the orders for payment in and has not adduced any evidence that would satisfy me to the requisite standard that they are unable to comply.’³³

[55] This conclusion was repeated at paragraph [69]:

³⁰ Numbered i) through iii) in the preceding sub-paragraph a).

³¹ Extracted from Held points No's 2 and 3 of the Judgment.

³² (1966) Ch. 603.

³³ Reference is made to this finding again at paragraph [70] of the Simpson Appeal Judgment.

“Also, it is not correct to say, as the appellant submitted, that the Committal Order does not demonstrate that the learned judge made a finding that BONI had breached the 5th March Order. First, the Committal Order itself was expressly made by the learned judge on the basis of the ‘failure’ by BONI to comply with the terms of the 5th March Order to pay the stipulated sum into court. (para.1) This is a clear finding by the learned judge that BONI had not complied with the 5th March Order. Moreover, the finding as to BONI’s noncompliance with the court’s orders for payment into court of the prescribed sum, including the 5th March Order, is made consistently by the learned judge at paragraphs [52] to [55] of his said written judgment.”

[56] It is important to note from these two passages that in the Simpson Appeal, the Court pointedly opined that the learned judge did make a finding that BONI had disobeyed the Payment Order. It noted elsewhere that such a finding was a precondition to making the Committal Order by which Mr. Simpson was sentenced for BONI’s contempt.

[57] It is also noteworthy that although the orders in the Committal Order imposed no obligation on BONI, paragraph 1 of the order explained the reason for Mr. Simpson’s imprisonment as follows:

“... for the failure of the Defendant, the Bank of Nevis International Limited to comply with the terms of the order dated 5th March 2025, that the Defendant to (sic) pay the sum of US\$3,017,909.88 into Court by 12th March 2025.” (Emphasis supplied)

This clause reflects that BONI was indeed found to have disobeyed the order. This finding coupled with the reasons for Mr. Simpson’s imprisonment outlined in the judgment demonstrates, as found by this Court in the Simpson Appeal, that BONI was found to be in contempt of court.

[58] The ratio decidendi of the Simpson Appeal was that the mandatory procedural requirements prescribed by CPR Part 53 had not been satisfied, in particular the requirement for service of the Payment Order timeously to afford a reasonable opportunity for compliance. Significantly, the Court did not confine this conclusion to Mr. Simpson but extended it to the conclusion that BONI itself was deprived of a realistic chance to comply.

- [59] Ultimately, following **Ronson Products Ltd v Ronson Furniture Ltd.** the Court determined that there was a clear prejudice to Mr. Simpson as contemnor which required compliance by payment by BONI into court of a large sum of money. It ruled that this prejudice stemmed from and was a result of the very late service of the Payment Order on Mr. Simpson, a mere 1.5 hours before the mandatory stipulated time on the said date for its compliance, and after commercial banks had already closed for the day. Further, it found that this was clearly unfair and an injustice to Mr. Simpson who was charged with ensuring BONI's compliance with the said order under peril of his imprisonment for contempt. Very significantly, the court recognized and opined that the prejudice resulting from the late service extended to BONI as well, it having suffered the same unfair and unjust consequences as Mr. Simpson.
- [60] The Court concluded further that the failure by the lower court to analyze whether BONI had been afforded a reasonable opportunity to comply constituted a fundamental defect going to the fairness of the committal proceedings and the making of the Committal Order and was not a mere technical procedure.³⁴ It was on the basis of those findings of fundamental breaches of the principles of procedural fairness and justice that the Committal Order was set aside. Those conclusions are directly applicable to the present appeal.
- [61] Furthermore, this Court is bound by those findings by virtue of the principle of *stare decisis*. There are no exceptions which absolves it of that obligation. It follows that once this Court determined in the Simpson Appeal that the Committal Order was procured in proceedings that did not comply with the mandatory procedural safeguards under CPR Part 53, no justifiable basis exists on which the Committal Order can continue to stand in relation to BONI.

³⁴ At paragraphs [74] – [75] of the Simpson Appeal Judgment.

[62] I would therefore adopt and apply in this appeal the reasoning of the Court in the Simpson Appeal. Contempt proceedings engage personal liberty considerations. Therefore, strict compliance with the statutory conditions governing the exercise of the committal jurisdiction is mandatory. Compliance with CPR 53.4 was an essential precondition to the court's lawful exercise of its jurisdiction to make the Committal Order. To summarize, the service of the Payment Order on Mr. Simpson a mere hour and a half before the expiry of the compliance period did not afford BONI a realistic opportunity to comply with it. This tardy service made the committal proceedings procedurally unfair and fatally flawed. Consequently, the present appeal must succeed for the same reasons as the Simpson Appeal.

[63] It is important to emphasize however, that the success of BONI's appeal does not arise because this Court is reconsidering the merits of the committal proceedings afresh. Instead, because the issues were authoritatively determined in the earlier Simpson Appeal, by virtue of the *stare decisis* doctrine exemplified in **Young v Bristol Aeroplane**, the reasoning in the Simpson Appeal binds this Court and the conclusions made in that appeal apply equally to the circumstances of the present appeal.

Consequential Orders Point

[64] It is unnecessary and would be inappropriate to make an order setting aside the Committal Order, this having been done in the Simpson Appeal. Likewise, it would be duplicative to issue the declarations made in the Simpson Appeal. This leaves the issue of costs.

Costs

[65] The general rule as to entitlement to costs is that the unsuccessful party is obliged to pay the successful party its costs – CPR 64.6(1). The court may deviate from this general rule but must give reasons for doing so. CPR 65.20 stipulates that the costs of any appeal shall be assessed.

[66] As with any other discretion, the court must act judicially in deciding which party should be awarded costs and it must consider the overriding objective in arriving at its decision. Other material considerations include the parties' respective conduct before and during the proceedings, the extent to which each party has succeeded, whether issues were pursued unnecessarily and whether the parties assisted the court in furthering the overriding objective.

[67] In **Webster Dyrud Mitchell (A Partnership) et al v Jenny Lindsay**³⁵ this Court emphasized that litigation behaviour may properly influence the court's exercise of the costs discretion. I bear these provisions and principles in mind in considering the issue of costs.

BONI's Submissions

[68] BONI submitted that, but for the Simpson Appeal, it would have succeeded substantially on the grounds on which Mr. Simpson did. It contended that it should be awarded its costs of the appeal and in the High Court. It argued alternatively that should the Court agree that the appeal was viable only until the setting aside of the Committal Order on 17th October 2025, it should be entitled to its costs of the appeal up to that date, while Selecta would be entitled to its costs from that date onward. It maintained that in either case, it should recover costs in the High Court.

[69] BONI's contention that it be awarded costs of the High Court proceedings surfaced for the first time in its submissions. The judge made no order as to costs arising from the committal proceedings, none of the grounds of appeal raised such an issue and it was not a relief sought in the Notice of Interlocutory appeal. It is therefore not an issue before the Court on this appeal. I would make no order as to costs in the High Court.

[70] Selecta submitted that once the Simpson Appeal was decided BONI should have discontinued the instant appeal because it could obtain no further practical relief in

³⁵ AXAHCVP2017/0001 (delivered 20th September 2021, unreported).

light of the setting aside order made in the earlier appeal. Additionally, Selecta argued that even if BONI prevailed on the merits of the appeal, in light of its unreasonable conduct in pursuing the appeal after 17th October 2025, it should be denied all costs beyond that date and instead those costs should be awarded to Selecta on the prescribed costs scale. **Webster Dyrud Mitchell (A Partnership) and others v Jenny Lindsay** was cited in support as authority for the proposition that the parties' conduct in litigation is a relevant factor to be considered by the court in the exercise of its discretion as to costs.

[71] I am of the firm view that BONI was fully entitled to institute this appeal and to maintain it while the Committal Order remained extant. BONI had a sufficient interest in challenging its validity until it was set aside by the Court in the Simpson Appeal and cannot be criticised for pursuing its appeal.

[72] Another material factor is that ultimately BONI prevailed at the appellate level based on the *stare decisis* doctrine rather than from a separate consideration of the issues. This Court has effectively rejected the legal basis on which the Committal Order rested. In my opinion, this outcome should not be surprising to either party. In furtherance of the overriding objective, it behoved the parties to consider the issues and the principles set out in this appeal as the basis for the decision. Apparently, this was not done. Instead of utilizing the court's resources to achieve, what to my mind was a predictable outcome, furthering the interest of justice should properly have prompted the parties to resolve this appeal through settlement discussions, mediation or other conciliatory avenues. This is not to say that either party was wrong in insisting on a full-fledged hearing and judicial determination. They were entitled to insist on that course.

[73] What is clear however, is that after the Simpson Appeal Judgment was delivered on 17th October 2025, the position altered significantly. As recited earlier, that judgment authoritatively determined the legal principles governing the validity of the Committal Order, the identical issues that are the subject of this appeal. Whilst BONI retained

a sufficient interest beyond that date to have this Court pronounce on and determine the legal consequences of the Simpson Appeal Judgment for purposes of its appeal, the reality is that the principal relief sought had already been granted. Thereafter, the remaining issues concerned BONI's standing to pursue its appeal, the effect of the Simpson Appeal decision and costs.

[74] It follows that after 17th October 2025, BONI should really have seriously considered discontinuing the appeal on agreed terms as to costs with the sole objective of recovering those costs reasonably incurred in pursuing its appeal. For its part, Selecta was entitled to resist claims for costs beyond that date. Taking all of the circumstances into account, and in light of the parties' conduct, I am satisfied that the justice of this case is best served by departing from the general principle that costs follow the event, allowing BONI its costs only until 17th October 2025 when the decision in the Simpson Appeal was made. By the same token, Selecta is entitled to its costs after 17th October 2025 up to the date of delivery of this judgment since once the decision was delivered, the continuation of BONI's appeal was unnecessary, save for the limited purposes indicated. The respective costs are to be assessed by a judge of the High Court if not agreed within 21 days.

[75] The Court in the Simpson Appeal having set aside the Committal Order and made declaratory orders regarding the procedural defects in the committal proceedings, it is unnecessary to repeat those orders.

Disposition

[76] For the foregoing reasons, I would allow the appeal. BONI shall have its costs of the appeal incurred up to and including 17th October 2025 to be assessed by a judge of the High Court if not agreed within 21 days. Selecta shall have its costs of the appeal incurred after 17th October 2025 up to the date of delivery of this judgment to be assessed by a judge of the High Court if not agreed within 21 days.

Miscellaneous

[77] I wish to thank counsel on both sides for their submissions. The delivery of this judgment was delayed due to unavoidable circumstances. This is regretted. The parties' forbearance in the interim is appreciated.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Reginald Armour
Justice of Appeal [Ag.]

By The Court

Chief Registrar