

THE EASTERN CARIBBEAN SUPREME COURT

COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA

VIDEOCONFERENCE

Monday, 23rd March – Friday, 27th March 2026

JUDGMENTS

James Liburd

v

[1] Noel Errol Liburd Jr.

[2] Noel's Courtesy Garage Limited

[NEVHCVAP2022/0010]

SAINT CHRISTOPHER AND NEVIS

Date:

Monday, 23rd March 2026

**Coram for
delivery:**

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]**

**The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal**

Appearances:

Appellant:

**Mr. Kristian Johnson holding papers for Mr. Brian
Barnes**

Respondents:

Mrs. Jackie Hunkin-Taylor

Issue:

**Civil appeal – Shareholding of a company –
Directors of a company – Appeal against order
appointing the 1st respondent as a managing director
and removing the appellant as a director – Whether
the appellant is entitled to all rights and privileges of
a director and shareholder of the company –
Whether the records and resolutions of Directors**

and Shareholders filed on 31st January 2018 and 15th November 2019 at the Nevis Companies Registry had the legal effect of changing the ownership and constitution of the company – Whether the shareholding in the company of the deceased belongs to his estate and is held jointly with the appellant as the owners of the company – Whether any and all amendments to the records of the company by the first respondent without the appellant's authorisation and consent, prior to and post the deceased's death are null, void and of no effect – Whether the equity provision under section 241 of the Companies Ordinance was properly applied by the learned judge

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed in its entirety and the learned judge's judgment and his orders dated 20th July 2022 are affirmed.
2. It is declared that the directors of the company are those set out in the 2022 annual returns with the exception of the deceased.
3. Costs are awarded to Noel Errol Liburd Jr. and Noel's Courtesy Garage Limited to be assessed by the Chief Registrar if not agreed within 21 days of today's date.

Reason:

1. The question as to the identity of the directors, the shareholders and the extent of their shareholding in the company as at 2003 is one of mixed fact and law, depending for its resolution on the evidence and application of the law to the findings of fact or inferences drawn from those facts. An appellate court must exercise restraint when invited to interfere with a lower court's findings of fact, the assessment of such facts and inferences drawn from such facts. The appellate court may disturb such findings and replace them with its own, only if satisfied that the trial

judge committed an error in arriving at his findings by reason that there is no evidentiary basis for his conclusion or where it is pellucid that he misunderstood the evidence, failed to consider material evidence or erred in some other material respect and made a finding of fact that is plainly wrong. An appeal against a finding of law on the other hand would succeed if the appellant demonstrates that the learned judge applied an incorrect principle of law to the facts of the case or misapplied a correct legal principle.

Watt or Thomas v Thomas [1947] 1 All ER 582 applied; Piglowska v Piglowski [1999] 1 WLR 1360 applied; Margaret Blackburn v James Bristol GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) followed.

- 2. With reference to the status of the shareholders and the directors of the company (issues 1 and 3), the judge was correct in concluding that the deceased's estate held three shares and the appellant one share, and that the directors named in the 2003 annual returns remained the company's directors up to the date of trial. The learned judge had regard to the appellant's and Mr. Hanley's written and oral testimony, the filings at the Companies Registry including the Articles of Continuance and the 2003 annual returns as well as Mauva Daniel's account. He preferred the account of Mr. Hanley to the appellant's and explained his reasons for doing so at paragraph 27 of the judgment in the court below. Further, although not mentioned by the learned judge, section 69(6) of the Companies Ordinance provides that a director's appointment is current unless the shareholders fail to elect**

new directors in keeping with the statutory dictate. This is a perfectly sound legal basis on which to hold that the directors named in the 2003 annual returns remained directors up to the date of trial. It follows that if the appointments of the persons named as directors in the 2003 annual returns were legitimate, their directorship would last until they are replaced through election by shareholders, by reason of death or other legally valid mechanism.

Section 69(6) of the Companies Ordinance Chap. 7.06 of the Revised Laws of Saint Christopher and Nevis considered.

- 3. Additionally, the documentary evidence lends credible support to the learned judge's preference for Mr. Hanley's account, particularly in circumstances where the appellant produced no evidence to discharge his burden of proof of establishing on a balance of probabilities that (a) he was not present at the 2003 meeting which according to the minutes was attended by him and the two other shareholders in their capacity as directors; (b) the shareholdings and directorship as at August 2003 was other than recorded in the annual returns filed on 12th August 2003; and c) the court would be entitled to or justified in disregarding the statutory import of sections 105(1), 372(3) and 194 of the Companies Ordinance to the effect that the annual returns are, without more, evidence of the identity of shareholders and directors in a company. The evidence and the relevant statutory provisions and applicable legal principles eminently support those factual and legal findings. There is no legal or evidentiary basis for disturbing them. The**

related grounds of appeal should therefore be dismissed. The directors of the company as at 2003 and up to the date of the trial are James Liburd, Claudius Hanley and Mary Hanley-Queeley.

Sections 105(1), 372(3) and 194 of the Companies Ordinance Chap. 7.06 of the Revised Laws of Saint Christopher and Nevis considered.

4. None of the challenged findings of fact or of law set out in the notice of appeal take issue with the learned judge's determination that the son had no authority to attempt to alter the shareholding and directorship of the company through the 2018 and 2019 resolutions because the power of attorney would not have empowered him to do so unilaterally and moreover by then, his father had already passed away. Further, the judge ruled that the son could not make the resolutions and/or take any such action without notice to the other shareholders and furthermore, that the 2018 and 2019 resolutions were invalid (as the appellant contended) and ought to be set aside. In the premises, there is no viable issue for this Court's consideration in relation to the question of the legal effect and validity of the 2018 and 2019 resolutions because the appellant did not include any such ground of appeal in his notice of appeal. Moreover, it was not open to him to appeal on those bases since the judge had already determined the issue in his favour and made a declaratory order disposing of the related contentions. Consequently, issues 2 and 4 are non issues requiring no deliberation or pronouncement by this Court.

5. The court is empowered by section 241 of the Companies Ordinance to rectify matters where it is satisfied, on application by a shareholder or other complainant, that the powers of the directors are being exercised or have been exercised in an oppressive or unfairly prejudicial manner or in a way that unfairly disregards the interests of any shareholder, creditor, director or officer of the company. The reliefs that may be granted by the court include, but are not limited to an order restraining the conduct about which the complaint is made, an order requiring a company within a specified time to produce to the court or an interested person financial statements in the form required by section 149 or an accounting in such other form as the court may determine, and/or an order compensating an aggrieved person. In the context of whether it would be just and equitable to grant such relief, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.

Section 241 of the Companies Ordinance Chap. 7.06 of the Revised Laws of Saint Christopher and Nevis considered.

6. The learned judge found that the actions taken by the company and the directors during the period of the son's management of the company did not constitute conduct that was oppressive, unfairly prejudicial towards the appellant or unfairly disregarded his or the company's interests. In fact, the judge commended the son for taking remedial action to salvage the company's business

prospects at a time when the appellant was aloof from the company's management and was content to allow the son to assume responsibility for the company's operations including its debt obligations when it was no longer in good standing with the Registry of Companies; and financial institutions were attempting to foreclose on its real assets. Moreover, the judge found that the appellant's lack of interest in the company's operations characterized his relationship with the company for most of its existence. There was abundant evidence from which the learned judge could so find. The learned judge extracted and recited the relevant principles governing the operation and interpretation of section 241 of the Companies Ordinance and cannot be faulted for arriving at the factual conclusions that he did. The oral and documentary evidence overwhelmingly support those findings.

PIC Insurance Company Ltd. v Zona Bartley and Zorol Bartley et al ANUHCVP2019/0003 (delivered 28th January 2021, unreported) followed; BCE Inc. v 1976 Debentureholders 2008 SCC 69 considered.

7. An examination of section 241(1) reveals that the predicate to the court granting relief is an application by a complainant alleging oppressive conduct by the company or its directors. The court is authorised to grant relief based on such application, but only if, it is satisfied that the company's or a director's powers or the company's business affairs have been exercised in a manner that is oppressive, unfairly prejudicial to or unfairly disregards the interests of any shareholder, creditor, director or officer of the company. It

is instructive that once such an application is presented the court is placed on inquiry regarding the overall conduct of the company's affairs and not only as regards the allegations by the complainant. The court is therefore, not limited to considering the interests of the complainant but also the company's interest and the interest of other interested persons such as creditors and shareholders.

8. In determining whether an individual is a de facto director, the touchstone is whether the defendant was part of the corporate governing structure. Inherent in that touchstone is the distinction between someone who participates, or has the right to participate, in collective decision-making on corporate policy and strategy and its implementation, on the one hand, and others who may advise or act on behalf of, or otherwise for the benefit of, the company, but do not participate in decision making as part of the corporate governance of the company. Accordingly, the test is not satisfied by someone who was at all times and in all material decisions subordinate to the de jure directors. Taking into account that the appellant and Mr. Hanley were aware that the son was being charged with managing the company's business and had essentially given him free rein to determine the company's direction and that he did just that, the judge ruled that the son was the de facto director. There is no appeal against that finding. It is clear that the gist of the judge's reasoning is that he found that the appellant's course of dealing with the company as a director for the most part, ran afoul of section 241(2)(c) in that his conduct was unfairly

prejudicial to and unfairly disregarded the interests of the creditors and by extension the shareholders and amounted to a breach of his fiduciary duties to the company as a director. On the facts, the judge was entitled to so find as a matter of law. No factual or legal basis has been advanced for disturbing those findings.

State for Trade and Industry v Hollier and others [2006] EWHC 1804 (Ch) applied.

Case name:

[1] JSN Development Group Limited
[2] HBC1 Properties Limited
v
[1] Global Bank of Commerce Limited
[2] Brian Stuart-Young
[ANUHCVP2022/0025]

ANTIGUA AND BARBUDA

Date:

Monday, 23rd March 2026

**Coram for
delivery:**

The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal

Appearances:

Appellants:

Mr. Andrew O’Kola

Respondents:

**Dr. David Dorsett for the 1st respondent
Mr. Jason Tiwari for the 2nd respondent**

Issue:

**Application to strike out appeal – Company law –
Company struck off Register of Companies –
Whether a struck-off company retains legal
personality or capacity to institute or maintain
proceedings – Whether proceedings brought by a
struck out company are a nullity – Whether**

restoration to the register is required before a struck-off company may pursue proceedings- Whether co-appellant had standing to maintain appeal where principal appellant lacked capacity – Abuse of process – Delay in prosecuting appeal – Section 511 and 512 of the Companies Act 1995 of Antigua and Barbuda – Rules 26, 62.8 and 62.12 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023

Result/Order:

IT IS HEREBY ORDERED THAT:

1. JSN Development Group Limited is struck out as an appellant in the notice of appeal filed on 12th December 2022 and the amended notice of appeal filed on 14th December 2022.
2. The appeal is struck out in its entirety as a nullity.
3. The stay of execution granted by the order of Thom J dated 31st January 2024 is hereby discharged.
4. The applicants are awarded their costs of the applications, such costs to be assessed by a Judge of the High Court if not agreed within 21 days of the date of this judgment.

Reason:

1. A company struck off the Register does not retain capacity to prosecute or maintain proceedings in its own name without restoration. Section 512 of the Antigua and Barbuda Companies Act preserves the liability of a struck-off company and its officers so that obligations may continue to be enforced notwithstanding the company's removal from the Register. However, that provision does not confer upon the struck-off company a continuing procedural capacity to invoke the jurisdiction of the court for its own benefit. The section is directed to the protection of creditors and not to enabling a deregistered company to pursue litigation while it remains outside the statutory regime governing corporate compliance.

Section 512 of the Companies Act of Antigua and Barbuda, 1995 applied.

2. A struck-off company must first be restored to the Register before pursuing proceedings in its own name. The authorities establish that although liabilities may be enforced against a struck-off company, a company wishing to pursue claims or obtain relief must first apply for restoration to the Register. A notice of appeal filed and prosecuted in the name of a company which lacks capacity is therefore a nullity.

Blairmont Rice Investments Inc v Kayman Sankar Co Ltd [2021] CCJ 7 (AJ) GY applied; Associated Asbestos Services Ltd v Canadian Occidental Petroleum Ltd [2002] ABQB 898 considered; Galantis v Alexiou [2019] UKPC 15 applied.

3. Proceedings instituted by an entity lacking legal capacity are a nullity which cannot be cured by the court's case management powers. Where a party lacks legal personality or competence to litigate, the defect is jurisdictional. The overriding objective and general case management powers under the Civil Procedure Rules cannot be used to validate proceedings brought in the name of an entity which the law does not recognise as having the capacity to sue.

Kimathi v Foreign & Commonwealth Office (No 2) [2016] EWHC 3005 (QB) applied.

4. The appeal could not proceed solely in the name of the co-appellant. The injunction application in the court below had been pursued against the Bank only by JSN. Once JSN's participation was found to be a nullity, the appeal could not be sustained by HBC1 alone, as it had not sought the injunctive relief below and had no independent basis upon which to challenge the decision refusing that relief.
5. Accordingly, the appeal is struck out in its entirety. JSN is struck out as an appellant on the basis that it lacked capacity to institute or maintain the appeal, and the appeal, as constituted, cannot proceed in the absence of a

competent appellant. The stay of execution previously granted must be discharged with costs awarded to the applicants.

Case name:

Adolphus John Sitney

v

[1] Benedict Noel

[2] Martha Noel

[3] Bernadine Steele

[4] Rachel Steele

[5] Dunbar Christopher Steele

[6] Javier Steele

[GDAHCVAP2022/0018]

GRENADA

Date:

Wednesday, 25th March 2026

**Coram for
delivery:**

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]**

The Hon. Mde. P. Nicola Byer, Justice of Appeal

**The Hon. Mde. V. Georgis Taylor-Alexander, Justice
of Appeal [Ag.]**

Appearances:

Appellant:

Mrs. Winnifred Duncan Phillip

Respondents:

Dr. Francis Alexis KC for the 1st – 2nd respondents

Mr. Anselm B. Clouden for the 3rd – 6th respondents

Issue:

**Civil appeal – Claim for possession of land –
Adverse possession – Appellate interference –
Findings of fact – Whether the learned trial judge
erred in her findings of fact – Estoppel – Denial of**

title to land – Whether the learned trial judge was correct in law in holding that the respondents were not estopped from denying the appellant's title – Tenancy at will – Whether the learned trial judge erred in not finding that the respondents were tenants at will – Limitation – Adverse possession – Whether the learned trial judge was correct in granting the respondents an order for possession of the respective lots they occupied on the property

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is allowed against the decision of the learned trial judge on all grounds of appeal, excluding grounds of appeal 11 and 13.
2. The orders made by the learned judge at paragraph [64] of the written judgment are set aside.
3. The matter is remitted to be tried *de novo* before another High Court Judge.
4. There is no order as to costs.

Reason:

1. It will be very rare for an appellate court to overturn findings of fact by a trial judge. This does not mean that findings of fact by a trial judge are inviolable. Bearing in mind the need for caution, an appellate court will not interfere with findings of fact by a trial judge unless compelled to do so. The threshold is therefore a high one. An appeal court will not interfere with findings of fact of a trial judge unless it is satisfied that the judge at first instance has gone 'plainly wrong'. The same principles apply to primary findings of fact as they do to evaluations of those facts.

Beacon Insurance Co Ltd v Maharaj Bookstore Ltd [2015] 1 LRC 232 followed; Henderson v Foxworth Investments Ltd and another [2014] 1 WLR 2600 followed; FAGE UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 followed; Alexander v Noel (SLUHCVP2024/0012, unreported dated 10th March 2015 distinguished; Cook v Thomas [2010] EWCA Civ 227 followed; Biogen v Medeva [1997] RPC 1 followed; Maso Capital Investments Ltd and another v Trina Solar Ltd (Cayman Islands) [2025] UKPC 48 followed.

- 2. The following are some non-exhaustive examples meriting appellate interference in findings of fact by a trial judge (that is, where an appellate court is satisfied that the trial judge was plainly wrong): (1) a material error of law; (2) when a trial judge failed to analyse properly the entirety of the evidence; (3) where a finding of fact is made on which there was no evidence to support; (4) if the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable; (5) a finding of fact was based on a misunderstanding of the evidence; (6) a finding of fact which no reasonable judge could have reached; (7) if it can be shown that the judge had failed to use or had palpably misused his advantage of having seen and heard the witnesses; and (8) a demonstrable failure to consider relevant evidence.**

Henderson v Foxworth Investments Ltd and another [2014] 1 WLR 2600; Choo Kok Beng v Choo Kok Hoe [1984] 2 MLJ 165; In re B (A Child)(Care Proceedings: Threshold Criteria) [2013] 1 WLR 1911; Hamilton v Allied Domecq Plc [2006] SC 221; Wheeldon Bros Waste Ltd v Millennium Insurance Co Ltd [2019] 4 WLR 56; SS Hontestroom (Owners) v SS Sagaporack

(Owners) [1927] AC 37; and Watt (or Thomas) v Thomas [1947] AC 484 applied.

- 3. The assessment that must be carried out by an appellate court in an appeal of findings of fact by a trial judge is not the same as when determining an appeal from a discretionary decision of a trial judge. The principles outlined in the seminal case of Dufour v Helenair Corporation Ltd do not apply to appeals concerning findings of fact. The correct approach must always be used depending on the nature of the appeal with which the Court is concerned. A trial judge has no discretion to find facts that have not been presented on the evidence adduced at trial. They must evaluate the disputed versions and find the facts to arrive at their decision. That is markedly different from the exercise by a trial judge of a judicial discretion which involves a judge choosing between different courses of action in arriving at their decision. Where an appeal is concerned with an exercise of discretion, the identification of an error is not enough; a party must go on to show that because of that error, or the degree of it, that the decision by a trial judge was one that any number of judges reviewing the same facts would not have arrived at.**

Dufour v Helenair Corporation Ltd (1996) 52 WIR 188 distinguished; Alexander v Noel (SLUHCVP2024/0012, delivered 10th March 2025 unreported) not followed.

- 4. Where there is a conflict of evidence at trial, the trial judge must assess the demeanor of the witnesses against: (1) contemporary documents if they exist; (2) the parties' pleaded case; (3) the inherent probability of the rival contentions of the parties. If this approach is not adopted, there is a real risk that the evidence will not be properly**

evaluated, and as a result, the trial judge would have failed to take proper advantage of having seen and heard the witnesses. The Court found that the findings of fact made by the learned trial judge were not properly explained having regarded to the oral and documentary evidence that was before her. Since there were many facts in dispute the learned trial judge was required to conduct a proper evaluation of all the evidence, including consideration of its strengths and weaknesses, as well as testing what a witness says, for example, about the contents of contemporaneous document, compared to the actual text of that document. Nowhere in her evidence did the learned trial judge record her perception of any of the seven witnesses who gave evidence at trial. There was no thorough, or any, examination of the evidence of those witnesses to then clearly outline what weaknesses or strengths, if any, she found in their evidence. Similarly, there was no evaluation of any contradictions or inconsistencies in the evidence of any of the witnesses. The issues that arose at trial in the court below were very fact sensitive and required a thorough assessment of the oral and documentary evidence of the parties. Although the learned trial judge made some findings of fact, she did not go on to explain how or why she had reached those conclusions. In her written judgment, the learned trial judge was required to deal with the contested points in some detail to demonstrate that the essential issues have been addressed, which parts of the evidence have been given what appropriate weight, and why.

Horace Reid v Dowling Charles and Percival Bain [1989] UKPC 24 followed.

5. The parties are expected to know from the written judgment that the trial judge has considered the oral and documentary evidence in respect of the principal issues to be decided in the case. They are expected to be confident that the trial judge has considered all the issues raised and why the trial judge has found in favour of one party and not the other. A judgment must demonstrate that the essential issues raised by the parties have been addressed by the court and how they have been resolved. A failure to do so is likely to undermine the fairness of the trial. The party who has raised the grounds of challenge will have no confidence that the court has considered them at all; and he will have no idea why, despite his grounds of challenge, the evidence has been accepted.

Harb v Prince Abdul Aziz bin Fahd bin Abdul Aziz [2016] EWCA Civ 556 followed.

6. The learned trial judge's approach to the evidence was unsatisfactory in a significant respect, in that she did not refer to any of the oral evidence given by the parties at the trial. There was no identification (far less in any detail) of the questions that needed to be answered if she were to decide on the principal issues raised in the court below. The learned trial judge did not subject the oral evidence of the parties to any scrutiny particularly considering the conflicting versions given by the respective witnesses of the parties. She did not draw together the evidence from the various sources and analyse it in order to make her findings in relation to the individual issues raised at the trial. That was indeed necessary because the oral and documentary evidence of the parties pointed in different directions. The learned trial judge was required to identify the relevant evidence, discuss its

significance and explain why she had reached a particular conclusion. In doing so, she had to analyse the various possible implications of different strands of evidence, as well as the inherent probabilities.

Harb v Prince Abdul Aziz bin Fahd bin Abdul Aziz [2016] EWCA Civ 556 applied.

7. The learned trial judge did not assess any of the evidence of the seven witnesses who gave evidence at trial. There was no assessment of: (1) what evidence from which witness she accepted in relation to what part of the history of the case or of the issues to be decided or (2) which witness was being accepted as wholly or partly reliable or rejected as wholly or partly unreliable, and if so why. Consequently, the learned trial judge fell into error by not carrying out that central task of a trial judge when faced at trial with disputed documentary and oral evidence. The learned trial judge did not take advantage of having heard and seen the witnesses at trial such that appellate interference was exceptionally warranted in this case. The usual caution in overturning a trial judge's findings of fact did not apply because the learned trial judge did not make factual findings based on her assessment of the credibility or reliability of the witnesses who gave oral evidence, or the weight to be attached to their evidence. There were clear indications in her written judgment that the learned trial judge did not consider all the evidence that the parties presented to her at the trial. Consequently, the findings of fact made by the learned trial judge could not stand because they are plainly wrong.
8. The Limitation Act can only be used as a shield and cannot be used as a sword in acquiring a

declaration of ownership to property. Consequently, it was not open to the learned trial judge to grant the respondents, on their counterclaim, a declaration that they are entitled in law (based on the Limitation Act) to any part of the Property.

Arnold Celestine v Carlton Baptiste
GDAHCVAP2008/0011 (delivered 11th January 2010, unreported) applied.

9. Since the required evaluation and assessment of the oral and documentary evidence was not undertaken at trial by the learned trial judge, the matter must be remitted to be tried de novo before another High Court Judge. This was not a case where the Court of Appeal was in as good a position as the trial judge to make its own findings of fact.

Case name:

Ng Min Hong v Somarli Lie

v

Success Overseas Finance Ltd.

[BVIHCMAP2023/0028]

TERRITORY OF THE VIRGIN ISLANDS

Date:

Friday, 27th March 2026

**Coram for
delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Appellant: No appearance

Respondent: Dr. Alecia Johns

Issue: Civil appeal – Share valuation - Debarring order for failure to comply with disclosure - Natural justice – Duty of judge hearing matter ex parte - Expert evidence – Whether expert report amounted to bare ipse dixit – Valuation in absence of financial information – Adverse inference from non-disclosure – Appellate interference with findings of fact

Result/Order: IT IS HEREBY ORDERED THAT:
1. The appellant's appeal is dismissed.
2. Costs are awarded in favour of the first respondent to be agreed within 25 days failing which, costs should be assessed.

Reason:

1. A litigant who has been debarred from participating in a hearing may observe the proceedings, but that litigant is not permitted to make submissions on the merit of the issues arising on an application at a hearing. To allow a debarred litigant to do such would ultimately defeat the purpose of debarment. The order debarring the appellant from participating in the hearing to determine the value of the second respondent's shares curtailed the contributions that the appellant was permitted to make during that valuation hearing and there was nothing arising during that hearing that warranted any departure from the natural effect of debarment.
2. The duty of a judge conducting a hearing is to undertake a critical examination of the evidence before the court, which process may be assisted

by the litigants through examination-in-chief, cross examination, and the consideration of the merits and demerits of the issues that arise, so as to enable the judge to form reasoned views on the credibility of witnesses and on matters relevant to their independence and impartiality. A judgment, that is dependent on expert evidence, should demonstrate that the judge understood the case, addressed the principal issues in the case, and contain sufficient reasoning to enable the parties to know why they won or lost the case. However, a judge is not required to give reasons for every conclusion he arrived at, particularly where this may have depended upon the impression which witnesses made on the judge and his assessment of the skill, knowledge and experience of an expert.

3. The first respondent had the duty of proving its case on a balance of probabilities. A comprehensive presentation of the evidence was undertaken by Counsel for the first respondent at the valuation hearing. The intricacies of the Expert Report were examined by Mr. Dawson being subjected to examination in chief on his Expert Report in the form of an enquiry rather than a rehashing of its contents. Mr. Dawson was tasked to explain the contents of his report, and where necessary, as is within the discretion of a judge to do, the judge posed questions to Mr. Dawson and to Counsel for the appellant. Frankly, in all of the circumstances which obtained in this case, this approach collectively facilitated a fair and balanced hearing.

Griffiths v TUI (UK) Ltd [2023] 3 WLR 1204 followed.

4. The appellant was in practical control of relevant information that would assist the court in

ascribing a value to the second respondent's shares but failed to provide that information. As a consequence, the court did not have the benefit of key relevant information likewise, Mr. Dawson also did not have the benefit of the same for the purposes of preparing his Expert Report. The Expert Report acknowledges those shortfalls and used what are industry standards to advance assumptions to facilitate valuing the second respondent's shares being mindful of matters including the financial information it did have, market trends in the second respondent's industry, with reasoned positions being advanced to explain the conclusions presented. Notwithstanding those evidential constraints, the judge determined that Mr. Dawson was an impressive expert witness who was measured, professional, experienced, did not appear to be an advocate of the party who hired him and did a robust job in difficult circumstances. Those findings of fact were made after the judge had the benefit of observing Mr. Dawson being examined, hearing and considering his evidence as it emerged. This surely placed the judge in a prime position to form a view as to the cogency of Mr. Dawson's evidence. Further, the judge's findings discussed the shortfalls in the available evidence, specifically noting that even though the 2016 and 2017 financial statements for the second respondent were not available, an expert can use other indicators to come up with a value though such would be more peripheral and general, but such would not be a failure in that evidence.

5. The process of valuation of a shareholding cannot be an exact science. Though it ultimately involves a finding of fact, elements leading up to such finding may well involve points on which different minds, approaching the matter

judicially, could quite properly take different views, in other words, points to which there cannot be said to be exclusively one correct answer. The judge examined the nature of the second respondent's business, the comparables provided and explained why he preferred one methodology to another in determining the value of the second respondent's shares. Moreover, the judge viewed the evidence of the expert as being to the standard required to enable him to adjudicate on the matter despite the constraints. The absence of any additional areas identified by the judge for specific enquiry, apart from those he addressed, does not indicate insufficient scrutiny or improper restraint. In fact, on an examination of the oral judgment, it is apparent that the judge gave reasons for each position taken by him which demonstrates that he gave proper consideration to the evidence as he discharged his duties as an adjudicator.

Joiner v George [2002] EWHC 642 Ch applied.

6. Having not found favour with the substantive grounds of appeal, the order with respect to quasi-interest shall be maintained.

Case name:

Ng Min Hong v Somarli Lie

v

Success Overseas Finance Ltd.

[BVIHCMAP2022/0012]

TERRITORY OF THE VIRGIN ISLANDS

Date:

Friday, 27th March 2026

**Coram for
delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of
Appeal**

Appearances:

Appellant:

No appearance

Respondent:

Dr. Alecia Johns

Issue:

Commercial appeal – Companies – Unfair prejudice remedy under section 184I of Business Companies Act of BVI – Quasi-partnership – Personal relationship of mutual trust and confidence – Whether ‘Business’ relationship constituted a quasi-partnership – Whether quasi-partnership survives death of one original quasi partner where son of deceased takes over father’s role and jointly manages Business with surviving founder – Whether quasi-partnership can exist in circumstances where other members ‘outside the ring’ – Whether quasi-partnership possible where members outside the ring hold the balance of power – Right of access to records of Business – Failure to provide records – Affairs of the company – Whether failure to disclose records amounts to trivial breach or whether it rises to unfair prejudicial conduct – Unfair Prejudice – Whether the conduct of company A may amount to conduct of company B where director of company A is not a director of company B – Whether director of company A having de facto control of company B renders the conduct of Company B attributable to Company A– Whether company A’s refusal to pay dividends to company B amounts to unfair prejudice on the part of company

**B in relation to its members – Appellate review –
Findings of fact based on credibility**

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed and the orders of the Commercial Court upheld.**
- 2. The Appellant shall pay the Respondent's costs of the appeal, such costs to be assessed if not agreed, pursuant to Part 65 of the CPR, within 21 days of this order.**

Reason:

- 1. A quasi-partnership is an equitable relationship which may arise from the 'circumstances surrounding the conduct of the affairs of a particular company which are such as to give rise to equitable constraints on the behaviour of other members'. It need not possess all the characteristics or be akin to a partnership and there is no rule that there must be strict equal management in any quasi partnership arrangement; the nature of the relationship all depends on the understanding or the agreement. An agreement grounded in a personal relationship and mutual understanding is equally open to different kinds of formal responsibilities being allocated to one member as against another and yet remain a quasi-partnership which allows both to 'participate in the conduct of the business'. Thus, the equity which is a quasi-partnership may simply be an agreement to provide access to all the business records of a company without extending to full and joint management. It is sufficient that there is arrangement or agreement, whether written, oral and or by conduct, which makes it unconscionable for one of the partners of the quasi-partnership to insist on strict compliance with the formal rules governing the company.**

The equity does not entitle one party to disregard the obligation he assumes by entering the company, nor the court to dispense him from it. What it does, as equity always does, is that it 'enables the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.'

Strahan v Wilcock [2006] 2 BCLC 555 applied; Ebrahimi v Westbourne Galleries Ltd [1973] AC 360 applied.

- 2. The Judge, having found Mr. Lie to be a credible and truthful witness was entitled to believe his evidence of the personal relationship involving mutual confidence which existed between Mr. Lie and Mr. Wiyono, the discussions which took place between Mr. Lie and Mr. Wiyono's widow and the events which followed after Mr. Wiyono's death which related to Mr. Lie and Mr. Ng's joint management of the Business. The fact that the constitutional documents of PT PDP were inconsistent with the existence of a quasi-partnership, and that there was no written joint venture agreement ('JVA'), even while these parties executed such a JVA with another company, was not enough to nullify Mr. Lie's evidence of a quasi-partnership arrangement. The detailed expressions of the constitutional documents of the company would, in most cases, not determine whether a quasi-partnership exists in fact as it is axiomatic of the existence of a quasi-partnership that it will usually be inconsistent with the company's constitutional documents. Those documents would be determinative where they truly negative**

the existence of this equity. It must be recognised that by its very nature, a quasi-partnership often exists as a result of oral understandings and agreement between the relevant persons. It would therefore be important to make a distinction between those rules of formal constitutional documents of the company which are simply inconsistent with the existence of a quasi-partnership but yet not negative its existence in the face of the oral understanding and agreement.

Ebrahimi v Westbourne Galleries Ltd [1973] AC 360 applied; Tay Bok Choon v Tahansan Sdn Bhd [1987] 1 WLR 462 applied; George v McCarthy & Anr [2006] BCLC 714 distinguished.

3. There is no rule that a court may not find a quasi-partnership arrangement between only some of the shareholders (especially founder-shareholders) of a company, with the remaining shareholders being strangers to the arrangement. No doubt, every shareholder would be entitled to the strict enforcement of the rules which govern the company. Yet, the authorities have shown that the courts would be prepared to recognise a quasi-partnership where the member who is 'outside the ring' is simply a minority shareholder, as the majority would be entitled to lawfully and properly override the minority in any event. Once the party seeking to enforce the quasi-partnership arrangement has led evidence to prove the existence of the agreement, the question for the court is whether the presence of members 'outside the ring' changes the quasi-partnership character of the company. In this case, the presence of the other strategic members has never been shown to change the quasi-character of the Business or of SOFL. The mere fact of Mr. Siregar being 'outside the ring'

does not automatically mean that Mr. Lie and Mr. Ng did not have a quasi-partnership at the SOFL level. Mr. Siregar was simply a minority shareholder with 8.3% of the shares of SOFL and Mr. Lie and Mr. Ng each had 45.85% of the shares. The arrangement between Mr. Lie and Mr. Ng as found by the Judge would be that they would together be responsible for the management of SOFL, as was confirmed by (1) Mr. Lie's oral evidence of the quasi-partnership; (2) all of the nominee directors being required to take instructions from either Mr. Lie or Mr. Ng; (3) the DBT Mandate. They could not ignore Mr. Siregar's voting rights. But the reality was that Mr. Lie and Mr. Ng with 45.85% of the shares each, had an understanding, which if one of them chose to act contrary to that understanding and decided, for instance, to co-opt Mr. Siregar to vote out the other, then the ousted one would be entitled to enforce the equity.

Re Edwardian Group Ltd [2019] 1 BCLC 171 applied; Estera Trust (Jersey) Ltd v Singh [2018] EWHC 1715 (Ch) considered; Waldron v Waldron [2019] Bus LR 1351 considered; Dinglis Properties Ltd v Dinglis [2019] BCLC 325 considered.

4. A quasi-partnership between two persons would not survive the death of one of the quasi-partners, but where, as in this case, as found as a fact by the Judge, the son of the deceased partner, as heir of the deceased partner, enters the company with the understanding that he would join the remaining quasi-partner on the same terms as his father, then a new quasi-partnership arrangement could arise. In the circumstances of this case, the Judge accepted Mr. Lie's evidence that he and Mr. Wiyono's widow, and then Mr. Lie and Mr. Ng discussed

and agreed that Mr. Ng would enter the Business with the same understanding and arrangement which existed between Mr. Lie and Mr. Wiyono, and that Mr. Lie and Mr. Ng thereafter managed the affairs of SOFL through successive nominee directors. Within this context, the DBT Mandate instructed DBT to 'take instructions from either SL or NMH for all matters in relation to the management of SOFL and its assets'. These matters clearly recognise that either Mr. Lie or Mr. Ng possessed the 'joint and several' authority to make decisions for SOFL confirms the high degree of trust and mutual confidence each of these men had in the other. It was therefore properly open for the Judge to find that a quasi-partnership existed at the SOFL level.

Ebrahimi v Westbourne Galleries Ltd [1973] AC 360 applied; Matsuura v A&S Company Limited & Anr BVIHC (COM) 130 of 2015 distinguished; George v McCarthy & Anr [2006] BCLC 714 distinguished.

5. **Mr. Lie's voluntary withdrawal from the boards of the IOCs cannot be seen as a withdrawal from or a termination of the quasi-partnership, as the Judge also found as a fact that Mr. Lie had chosen to remain as a director of PT PDP and continue to jointly manage SOFL, and that it was Mr. Ng who engineered Mr. Lie's removal as a director of PT PDP and the management structure of SOFL. Therefore, that element of the quasi-partnership agreement which required him to be given access to the records of SOFL and the Business, and to be consulted on decisions, were enforceable obligations as against Mr. Ng and SOFL. The denial of such records in the circumstances of this case, which was part of a clear campaign to remove Mr. Lie from the Business and strip him of his beneficial interests,**

was no trivial matter as it meant that Mr. Lie had no timely knowledge of what was transpiring with the affairs of SOFL and only learnt of the various unfairly prejudicial conduct after they had occurred; therefore, the denial of access to records was by itself unfairly prejudicial for the purposes of section 184I of the BCA.

Phoenix Office Supplies Ltd and others v Larvin [2003] 1 BCLC 193 applied; Re Elgindata Ltd [1991] BCLC 959 applied.

6. There is nothing on the evidence or in law which indicates that the Judge was plainly wrong in relation to his findings in relation to the effect of Mr. Lie withholding information in relation to his acquisition of PT Rendi and PT Palmaris. The finding that PT Rendi and PT Palmaris were not ‘competitors of PT PDP and the Indonesian operating companies in any real or sensible sense’ is a relevant and significant matter. Having regard to the magnitude of Mr. Ng’s unconscionable conduct, which operated to completely obliterate all of Mr. Lie’s beneficial interests in SOFL and PT PDP and the Indonesian operating companies, Mr. Lie’s acts of failing to inform PT PDP of an opportunity to purchase other palm oil producing companies (not competitors) did not rise to the threshold of nullifying the quasi-partnership between the two men.

Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 followed; Beacon Insurance Company Ltd v Maharaj Bookstore Ltd [2014] UKPC 21 followed.

7. The principles guiding an appellate review of findings of facts are well established. An appellate court will not interfere with a Judge’s findings of fact, evaluation of those facts and

inferences drawn from them unless compelled to do so. This is because it is well accepted that the Judge is in the best position to bring to bear his expertise in assessing evidence, seeing and hearing the evidence first-hand. For this reason, when an appellate court is being asked to reverse a judge's findings of facts which turns on the credibility of witnesses, it should not do so unless it is satisfied that any advantage enjoyed by the trial judge by having seen and heard the witnesses could not be sufficient to explain or justify his conclusions. While the appellate court would be entitled to interfere if shown that the Judge has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at merely on the results of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case. An appellate court's intervention would therefore be justified when the trial judge's conclusion was one for 'which there was no evidence to support,' or which was based on a demonstrable misunderstanding of the evidence or demonstrable failure to consider relevant evidence. If there is no such identifiable error, and the question is simply one of judgment as to the appropriate weight to be given to the relevant evidence, the appellate court must be satisfied that the judge's conclusion 'cannot reasonably be explained or justified'. The Judge must be shown to be plainly wrong. In the present case, the Judge's findings concerning the cessation of dividends issue, the 2017 Disposition and the 2018 Rights Issue have not been shown to be plainly wrong. The Judge was entitled to draw adverse inferences from Mr. Ng's continued and consistent failure to provide relevant information about the stopped dividends payments, the 2017 Disposition, the 2018 Rights Issue, the 2019

Disposition and the IPO, and the absence of independent witnesses such as Madam Karlinah, his brother and Mr. Duad to corroborate his oral evidence on critical matters where he sought to cast responsibilities on others and to withdraw himself. The Judge was equally entitled to draw the compelling and irresistible inference and believe that Mr. Ng's was in de facto control of SOFL and in de facto and de jure control of PT PDP at all material times.

Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 followed; Beacon Insurance Company Ltd v Maharaj Bookstore Ltd [2014] UKPC 21 followed; JSC BTA Bank v Ablyazov & Anor [2018] EWCA Civ 1176 applied.

- 8. Mr. Ng's contention that the 2017 Disposition and the 2018 Rights Issue were merely the 'acts of PT PDP' and not the conduct of the affairs of SOFL is rejected. Where a respondent is in de facto control of a BVI company and uses that control to orchestrate the dilution of the company's underlying assets in a subsidiary for his own personal benefit, such conduct constitutes the conduct of the 'affairs of the company' under section 184I. The 2017 Disposition, which saw Mr. Ng's beneficial interest in PT PDP transferred out of SOFL to his own vehicle Grahaidea, directly prejudiced SOFL by stripping it of its majority status and leaving Mr. Lie's interest trapped in a minority vehicle with no dividend flow. This was a classic case of a majority shareholder using his position to shift value from the company to himself to the exclusion of the minority quasi-partner.**

R v Board of Trade, ex p. St Martins Preserving Co Ltd [1965] 1 QB 603 applied; Re a Company

No. 002470 of 1988, ex p. Nicholas [1992] BCC 895 applied.

9. The 2017 Disposition and the subsequent 2019 Disposition of PT PDP shares constituted a disposal of more than 50% in value of the assets of SOFL. Under section 175 of the BCA, such a transaction required shareholder approval. The failure to seek Mr. Lie's approval, within the context of a quasi-partnership where Mr. Lie had a legitimate expectation of consultation and joint management, rendered the dispositions not only a statutory breach but also a significant element of unfairly prejudicial conduct. The appellant cannot rely on the technicality that the shares 'belonged to him' originally; once transferred to SOFL, they became corporate assets subject to the statutory and equitable protections afforded to all shareholders.

Section 175 of the BVI Business Companies Act, 2004 applied.

10. The Judge's core finding that Mr. Ng embarked on a calculated campaign to 'obliterate' Mr. Lie's interests was supported by the evidence. In circumstances where the relationship of trust and confidence has completely broken down due to the bad faith of the majority, the court is entitled to exercise its wide discretion under section 184I to provide a remedy that protects the economic value of the minority's interest.

Section 184I of the BVI Business Companies Act, 2004 applied.

APPLICATIONS AND APPEALS

Case name: Director of the National Drug and Money
Laundering Control Policy

v

Michael G. Archibald
[ANUHCVAP2024/0011]
ANTIGUA AND BARBUDA

Date: Monday, 23rd March 2026

Coram: The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal

Appearances:

Applicant: Ms. Shannon Potter with Mr. Curtus Bird

Respondent: Mr. Andrew O’Kola

Issue: Application to strike out Motion for conditional leave
to His Majesty in Council - Whether the application
discloses reasonable grounds - Whether the manner
in which the application has been prosecuted is an
abuse of process or is likely to obstruct the just
disposal of the proceedings - CPR Part 11.15(1) -
Application to dismiss or vary order of a single
judge - Whether the interim stay ought to be
discharged - Whether the respondent has failed to
prosecute the application for leave to appeal to His
Majesty in Council – Whether striking out is an
appropriate and proportionate remedy

Type order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The Motion for leave to appeal to His Majesty in Council filed on 11th August 2025 is struck out for want of prosecution.**
- 2. The order of the single judge dated 20th October 2025 granting an interim stay of the judgment of the Court of Appeal dated 22nd July 2025 and the order of John J dated 17th October 2025 is discharged.**
- 3. The applicant shall have cost of the application, to be assessed by a judge of the High Court within 21 days of the date of this order.**

Reason:

Before the Court was a notice of application to strike out the application for conditional leave to appeal to His Majesty in Council and the stay of the ruling of the Court of Appeal asking the Court for the following orders: (a) that the applicant's notice of motion for conditional leave to His Majesty in Council filed on 11th August 2025 and the notice of application for a stay pending appeal filed on 14th August 2025 be struck out pursuant to Rule 11.15(1) of the Civil Procedure Rules (Revised Edition) 2023 ("CPR"), (b) the interim stay granted by the Order of The Hon. Mde. Vicki Ann Ellis, Justice of Appeal dated the 20th October 2025 be discharged ("the application").

The grounds of the application were that the Court, by way of CPR 11.15(1) has the power to strike out an application if it appeared, (1) that the application did not disclose reasonable grounds for bringing the application or (b) the application was an abuse

of the process of the court or it was likely to obstruct the just disposal of the proceedings. The application was supported by two affidavits by Marcia Edwards, one dated 13th November 2025 along with various exhibits and the other filed on 13th March 2026 also with exhibits attached thereto.

The Court having read the submissions filed for and on behalf of the applicant dated 13th January 2026 along with the authorities and the Court having observed that the respondent having only filed submissions on the 20th March 2026 at 11:41 a.m. and the respondent further filing authorities on the morning of 23rd March 2026 at 8:30 a.m, and the Court, despite that, having heard extensively from Mr. O’kola, the counsel for the respondent, the Court is satisfied that the respondent in this matter being the applicant for leave to appeal to His Majesty in Council has failed to prosecute the application for leave to appeal in a timely fashion. The respondent filed the application on 11th August 2025 along with the notice of motion for a stay pending the appeal on 14th August 2025, and further, having obtained an interim stay of execution of the Court’s judgment on 20th October 2025 with the condition that the applicant was to file and serve written submissions in support of the substantive application filed on 11th August 2025 on or before 29th October 2025. The respondent having failed to file those submissions in accordance with the order date 20th October 2025, having filed those submissions on 3rd February 2026 without first having obtained leave of the Court to so file those submissions, the Court is satisfied that the respondent not having prosecuted the appeal in a timely fashion, the application for leave to appeal to His Majesty in Council should be struck out and the interim stay of execution of enforcement of the Court of Appeal judgment date 22nd July 2025 and the interim stay of the Order of John J dated 17th October 2025 are hereby discharged.

The applicant is entitled to costs on the application to be assessed by a judge of the High Court within 21 days of the date of this order.

Case name:

Craig Cochrane

v

[1] Chief Immigration Officer

[2] The Attorney General

[ANUHLTAP2024/0001]

ANTIGUA AND BARBUDA

Date:

Monday, 23rd March 2026

Coram:

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]**

The Hon. Mde. Esco L. Henry, Justice of Appeal

The Hon. Mde. P. Nicola Byer, Justice of Appeal

Appearances:

Applicant/Appellant: Mr. Harold Lovell

Respondents: Ms. Joy Dublin with Ms. Rose-ann Kim

Issue:

Application for an extension of time - Application for adjournment - Consent Order

Type of order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for an extension of time to file submissions is granted.**
- 2. The respondents shall file their submissions in response within 28 days of the date of this order, that is, on or before the 21st of April 2026.**
- 3. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Antigua and Barbuda scheduled for the week commencing 29th June 2026.**

Reason:

Before the Court was a notice of appeal filed on 31st January 2024 as well as (1) an application for an extension of time filed on 18th March 2026. By consent order filed on 19th March 2026, the parties agreed to adjourn the hearing of the appeal until the next sitting of the Court of Appeal in Antigua and Barbuda. Accordingly, the Court granted the application for an extension of time to file submissions and adjourned the matter to the next sitting of the Court in Antigua and Barbuda to the week commencing 29th June 2026.

Case name:

Erica Thomas

v

Kelly Paul

[ANUHCVP2025/0009]

ANTIGUA AND BARBUDA

Date:

Monday, 23rd March 2026

Coram:

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]**

The Hon. Mde. Esco L. Henry, Justice of Appeal

The Hon. Mde. P. Nicola Byer, Justice of Appeal

Appearances:

Appellant: Mr. Justin L. Simon KC with him, Ms. Shannon Potter

Respondent: Ms. Kivinee Knight-Edwards, Ms. Dericia Browne and Mrs. Elizabeth Drakes- Laviscount

Issue: Civil appeal – Appeal against order entering judgment against the appellant sum of \$21,947.50 - Whether the learned judge erred in finding that the appellant was driving at excessive speed by relying on the respondent's and her son's later witness evidence, despite inconsistencies with the respondent's contemporaneous statement to the police made within two days of the accident - Whether the learned judge erred by failing to give sufficient weight to the photographic evidence showing the respondent's vehicle positioned in the path of the appellant's oncoming vehicle - Whether the learned judge erred in treating the 51-foot distance in the police report as the appellant's stopping distance – Whether the learned judge failed to find the respondent totally responsible for the accident – Cross appeal – Appeal against finding that the respondent was in the centre of the road due to the left-hand drive motor truck the respondent was driving and contributed to the accident - Appeal against finding that both parties were liable for the accident - Whether the learned judge erred in finding that the respondent was positioned in the middle of the road - Whether the learned judge erred in fact and in law when she placed unreasonable weight on the respondent's operation of a left-hand drive vehicle to determine the issue of liability, and apportioned 50% to the respondent's because of the same

Type of order: N/A

Result/order: IT IS HEREBY ORDERED THAT:

1. Judgment is reserved.

Reason: N/A

Case name: [1] Cyprian Kowalczyk
v
[1] Riaz Rahim Abdullah
[2] Ashley Nicole Harris
[3] Bre-Anne Laurel Julia Graham
[4] John Daniel Graham
[ANUHCVP2025/0033]
ANTIGUA AND BARBUDA

Date: Monday, 23rd March 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]

Appearances:

Applicant: In person

Respondents: Dr. Errol Cort with Ms. Alketz Joseph

Issue: Application to Adduce Fresh Evidence - Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 rule 62.24(1) - Whether the evidence could be obtained before the initial hearing; the evidence having arisen after the Order

under appeal was made on 19th November 2025 - Whether the evidence would have an important influence on the result of the case - Whether the evidence is apparently credible - Whether the criteria of Ladd v Marshall [1954] 1 WLR 1489 have been satisfied

Type of order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

1. This application is stayed pending further order of the Court.

Reason:

Before the Court was an application to adduce fresh evidence filed by the applicant/appellant on 26th February 2026 pursuant to rule 62.24(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and the inherent jurisdiction of the Court. The Court noted the indications given at the Case Management Conference held on 3rd February 2026 that there is a pending application before the court below to set aside the orders of the learned judge. The Court inquired and was informed by the appellant and confirmed by counsel for the respondents that judgment in respect of that application was reserved on 19th January 2026 and its delivery is imminent. The Court determined that it was inappropriate for the appellant to seek to proceed with this application and the substantive appeal while a decision of the High Court is pending in relation to the identical subject matter of this appeal, which is the Order of Drysdale, J made on 19th November 2025. Accordingly, the Court ordered that it be stayed until further Order of this Court

Case name:

1. Cyprian Kowalczyk

v

**[1] Riaz Rahim Abdullah
[2] Ashley Nicole Harris
[3] Bre-Anne Laurel Julia Graham
[4] John Daniel Graham
[ANUHCVP2025/0033]
ANTIGUA AND BARBUDA**

Date: Monday, 23rd March 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondents: Dr. Errol Cort and Ms. Alketz Joseph

Issue: Civil appeal - Whether the learned judge erred in finding that construction is on land owned by CDAL when both parties' evidence proved that the respondents are the registered owners of Parcel 572 - Whether the learned judge erred in finding no serious issue to be tried in private nuisance and breach of statutory duty - Whether the learned judge erred in preferring the DCA Report over irreconcilable objective photographic evidence - Whether the learned judge erred in failing to consider whether damages are an adequate remedy for the appellant - Whether the learned judge erred in failing to properly assess the balance of convenience - Whether the learned judge erred in finding the appellant lacks locus standi - Whether the learned judge erred in failing to preserve the status quo pending trial - Whether the learned judge erred in failing to consider the appellant's pending

application to add CDAL as fifth defendant - Whether the learned judge erred in failing to consider the appellant's application for consolidated relief - Whether the learned judge erred in failing to give sufficient weight to the urgency and irreversible nature of the harm - Whether the learned judge erred in treating the respondents' affidavits (filed 17th November 2025) as credible when they verified under oath physically impossible facts asserted in the DCA Report - Whether the learned judge erred in treating the respondent's hearsay legal principle as findings of fact

Type of order:

Oral Decision

Result/order:

IT IS HEREBY ORDERED THAT:

- 1. This appeal is stayed until further order of the Court.**

Reason:

Before the Court was an interlocutory appeal filed on 8th December 2025 against the Order of the learned judge made on 19th November 2025 wherein the appellant's application for interim relief was refused and he was ordered to pay costs of \$1000.00 to the respondents.

The Court noted the indications given at the Case Management Conference held on 3rd February 2026 that there is a pending application before the court below to set aside the orders of the learned judge. Accordingly, the Court inquired and was informed by the appellant, which counsel for the respondents confirmed, that the judgment in respect of that application was reserved on 19th January 2026 and its delivery is imminent.

The Court therefore determined that it was inappropriate for the appellant to seek to proceed

with the substantive appeal while a decision of the High Court is pending in relation to the identical subject matter of this appeal, which is the Order of Drysdale, J made on 19th November 2025. Accordingly, the Court ordered that it be stayed until further Order of this Court.

Case name:

Oszie Kelvin Russel

v

Commissioner of Police

[ANUMCRAP2025/0002]

Consolidated with

Ricardo Howell

v

The King

[ANUMCRAP2024/0005]

Consolidated with

Malique Challenger

V

Commissioner of Police

[ANUMCRAP2025/0003]

Consolidated with

Jamal Prince

v

Commissioner of Police

[ANUMCRAP2025/0004]

Consolidated with

Jeson Cedenno

v

**The Commissioner of Police
[ANUMCRAP2024/0004]**

ANTIGUA AND BARBUDA

Date: Monday, 23rd March 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Wendel G. Alexander and Mr. Andrew O’Kola

Respondents: Mrs. Shannon Jones-Gittens

Issue: Magisterial Criminal Appeals- Consolidated Appeals
- Whether the learned magistrate erred in principle in the approach to sentencing, including a failure to properly identify, apply, or give effect to the established principles and objectives of sentencing- Whether the learned magistrate took into account irrelevant considerations or failed to take into account relevant considerations- Whether the learned magistrate failed to exercise her discretion judicially and in accordance with established guidelines - Whether there was a failure to give adequate reasons for the sentence imposed - Whether the learned magistrate failed to honour or give proper effect to any legitimate expectation arising on the facts - Whether the sentence imposed was manifestly excessive or otherwise wrong in principle, having regard to the circumstances of the offence and the offender – Whether in all the circumstances, the sentence was just, proportionate, and consistent with comparable authorities

Type of order: Oral decision with written reasons to follow

Result/order:

IT IS HEREBY ORDERED THAT:

1. The consolidated appeals are allowed with written reasons to follow.
2. The sentences are varied as follows:
 - a. Jamal Prince [ANUMCRAP2025/0004] - 2 years and 11 months;
 - b. Oszie Kelvin Russel [ANUMCRAP2025/0002] - 1 year, 10 months and 20 days;
 - c. Jeson Cedeno [ANUMCRAP2024/0004] - time served
 - d. Malique Challenger [ANUMCRAP2025/0003] - 1 year and 10 months
3. Ricardo Howell [ANUMCRAP2024/0005] - 2 years and 2 months

Reason:

Before the Court were five appeals against sentence consolidated for hearing by Consent Order granted by a single judge on paper on 9th March 2026 in which the appellants challenged the decision of the learned magistrate in respect of possession of firearm, ammunition and cannabis offences. Having considered the written and oral submissions of counsel for the appellants and the respondents, the Court allowed the appeals and varied the appellants' sentences with reasons to follow.

Oszie Kelvin Russel's sentence was varied to a term of imprisonment of 1 year 10 months 20 days [ANUMCRAP2025/0002]; Jeson Cedeno's sentence was varied to time served [ANUMCRAP2024/0004]; Malique Challenger's sentence was varied to a term of imprisonment of 1 year and 10 months [ANUMCRAP2025/0003]; Ricardo Howell's sentence was varied to a term of imprisonment of 2 years and 2 months [ANUMCRAP2024/0005]; and Jamal

Prince's sentence was varied to 2 years and 11 months [ANUMCRAP2025/0004].

Case name:

[1] Orbimed Partner Masters Fund Ltd.

[2] Geoffrey C Hsu

[3] Sven H Borho

v

[1] Saif Partners IV LP

[2] Yuk Lam Lo

[3] Simon Anderson

[4] Shan Fu

[5] Shuge Jiao

[6] Yumin Qiu

[7] Yu Wang

[8] Rui-Ping Xiao

[9] Andrew Yan

[10] Weidong Yin

[11] Sinovac Biotech Ltd

[ANUHCVP2025/0034]

Heard together with:

[1] 1Globe Capital LLC

[2] Chiang Li

v

[1] Saif Partners IV LP

[2] Yuk Lam Lo

[3] Simon Anderson

[4] Shan Fu

[5] Shuge Jiao

[6] Yumin Qiu

[7] Yu Wang

[8] Rui-Ping Xiao

[9] Andrew Yan

[10] Weidong Yin

[11] Sinovac Biotech Ltd.

[ANUHCVP2025/0035]

Heard together with:

[1] Orbimed Partners Master Fund Ltd.

[2] Geoffrey C Hsu

[3] Sven H Borho

v

[1] Saif Partners IV LP
[2] Yuk Lam Lo
[3] Simon Anderson
[4] Shan Fu
[5] Shuge Jiao
[6] Yumin Qiu
[7] Yu Wang
[8] Rui-Ping Xiao
[9] Andrew Yan
[10] Weidong Yin
[11] Sinovac Biotech Ltd.
[ANUHC VAP2025/0036]

ANTIGUA AND BARBUDA

Date: Tuesday, 24th March 2026

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Thomas Roe KC with him Mr. Andrew O’Kola for the appellants in ANUHC VAP2025/0034 & ANUHC VAP2025/0036

Mr. Aiden Casey KC with him Mr. Craig Jacas for the appellants in ANUHC VAP2025/0035

Respondents: Mr. Ian Clarke KC with him Mr. Satcha Kissoon and Mr. Kemar Roberts for the 1st respondent in all three appeals

Ms. Renee St. Rose KC with her Ms. Marie-Ange Symmonds for the 2nd respondent in all three appeals

Mr. Michael Todd KC with him Mr. Kendrickson Kentish KC and Ms. Kathleen Bennett for the 3rd – 7th, 9th and 10th respondents in all three appeals

Mr. Stuart Alford KC with him Mr. Michael Koeiman and Ms. Claneisha Gomes for the 11th respondent in all three appeals

No appearance for the 8th respondent

Issue:

Interlocutory appeal - Appeal against order dismissing application for interlocutory injunction and ordering Replacement Board to serve as members of the board of directors until trial - Whether the learned judge erred by failing to consider OrbiMed's submission that the claim of the Replacement Board concerning the Incumbent Board's removal and replacement had no real prospect of success, and instead concluding without reasons that both parties had viable arguments - Whether the learned judge erred in applying the wrong test in relation to a serious issue to be tried at the interlocutory stage, treating the issues as limited to whether the claims were not frivolous or vexatious - Whether the learned judge ought to have assessed the relative strength of the parties' case including the submission that the claim of the Replacement Board was significantly less likely to succeed at trial - Whether the learned judge erred by failing to conclude that the claim that the Incumbent Board was removed and replaced on 8th July 2025 had no real prospect of success at trial - Whether the learned judge erred in his assessment of the balance of convenience - Whether the learned judge acted without jurisdiction and in breach of natural justice by granting relief not sought by either party, when he ordered that the Replacement Board shall serve as directors until trial - Whether the learned judge erred in law by imposing unreasonably inadequate restrictions on the

Replacement Board while permitting it to act as the board until trial - Whether the learned judge erred in law by ordering Stapleton Chambers to cease acting for the Company Orbimed Partners Master Fund Ltd

Type of order:

Adjournment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The continuation of the hearing of the appeal is adjourned to a date to be fixed by the Chief Registrar upon Counsel indicating their dates of availability.**

Reason:

Given the length of the parties' oral submissions, they were unable to complete their submissions within the one day allotted. Accordingly, the Court adjourned the appeal for continuation of the hearing on a date to be fixed by the Chief Registrar upon Counsel indicating their dates of availability.

Case name:

Brit Syndicates Limited

v

Ashley Hanley

[ANUHCVP2024/0009]

ANTIGUA AND BARBUDA

Date:

Wednesday, 25th March 2026

Coram:

The Hon. Mde. Margaret Price Findlay, Chief Justice [Ag.]

The Hon. Mde. P. Nicola Byer, Justice of Appeal

The Hon. Mde. V. Georgis Taylor Alexander, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Kendrickson Kentish KC

Respondent: In person

Issue: Application for leave to appeal - Whether the proposed appeal has a realistic prospect of success

Type of order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The applicant is granted leave to appeal the judgment of Master Carlos Michel dated 9th February 2020.
2. The applicant shall file the notice of appeal within 21 days of the date of this order.
3. Thereafter the appeal shall proceed in accordance with the Civil Procedure Rules (Revised Edition) 2023.

Reason: The Court noted the amended notice of application for leave to appeal filed on 29th February 2024 with the affidavit in support filed on 1st March 2024, the submissions filed on 22nd March 2024. The Court having considered the parameters of rule 62.2(8) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised) 2023 and the principles stated in Othneil Sylvester v Faelleseje Civil Appeal No. 5 of 2005 (delivered 20th February 2006, unreported) and Cage St. Lucia Limited Treasure Bay (St. Lucia) Limited Saint Lucia Civil Appeal No. 45 of 2011 (delivered on 23rd January 2012,

unreported), granted the applicant leave to appeal the judgment of Michel M dated 9th February 2020.

Case name:

**Indira Salisbury
v
Astra Holdings Limited
[ANUHCVP2024/0022]
ANTIGUA AND BARBUDA**

Date:

Wednesday, 25th March 2026

Coram:

**The Hon. Mde. Margaret Price Findlay, Chief Justice
[Ag.]
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. V. Georgis Taylor-Alexander, Justice
of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Leslie Thomas KC

Respondent:

**Mr. Anthony Astaphan SC with him Mr. Kwame
Simon and Mrs. Carla Brooks-Harris**

Issue:

Civil appeal - Appeal against order entering judgment for the respondent, declaring the respondent the owner of 66.7% shares in Atlantic Properties Limited, that the 66.7% shares are held on trust until registered by the respondent and awarding prescribed costs and interest to the respondent - Whether the judge erred by mischaracterising Kingsley Thorogood's evidence as merely accepting David Toms' assertion that he had invested monies into the respondent - Whether the judge erred in concluding that Mr. Thorogood

was an untruthful witness regarding the existence of the director's loan - Whether the judge erred in drawing adverse inferences from the absence of bank statements evidencing transfers from David Toms to the respondent, without properly considering whether there was any legal or practical obligation to retain such documents, particularly given the passage of more than 20 years - Whether the learned judge erred by failing to properly consider the clear reference in the 2002 AGM minutes which were sent to all shareholders, in advance of the 2003/4 AGM - Whether the judge erred in stating that the 2002 AGM minutes were placed on the side table - Whether the learned judge erred in granting relief vesting the Atlantic Properties shares in the respondent without properly considering the appellant's argument that such relief would constitute an unjustified windfall - Whether the learned judge erred by failing to address the appellant's contention, supported by undisputed documents, that Mr. Toms was the majority beneficial owner and controlling mind of Arpels Investments Limited

Type of order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Reason:

N/A

Case name:

The Barbuda Council

v

PLH (Barbuda) Limited

[ANUHCVP2024/0030]

ANTIGUA AND BARBUDA

Date: Thursday, 26th March 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]

Appearances:

Applicant: Dr. Lenworth Johnson

Respondent: Mr. Anthony Astaphan SC, with him, Dr. Errol Cort and Mrs. Sharon Cort-Thibou

Issue: Application for leave to appeal to His Majesty in Council as of right - Section 122(1)(a) of the Constitution of Antigua and Barbuda - Whether the proposed appeal which concerns a final decision in civil proceedings where the matter in dispute is of the prescribed value of \$1,500.00 or upwards is one which raises a genuinely disputable issue(s) which ought to be submitted to His Majesty in Council

Type of order: N/A

Result/Order: IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Reason: N/A

Case name:

**Allan LeBlanc
v
Althea James for Sylvia Benoit
[ANUHCVP2025/0004]
ANTIGUA AND BARBUDA**

Date:

Thursday, 26th March 2026

Coram:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]**

Appearances:

Applicant/Respondent: Mr. Peyton Knight

Respondent/Appellant: Ms. Talia Da Costa

Issue:

Application for Transcript to be produced and made part of the appeal- Rule 62.13(1)(e) Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023- Whether the filing of the transcript is necessary for the determination of the appeal

Type of order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The transcript filed on the 17th March 2026 is deemed properly filed and forms part of the record.

Reason:

Before the Court was an application to include the transcript of the Chamber Hearing held on 23rd January 2025 in the court below as part of the record of appeal. With respect to this application, the respondent has withdrawn an earlier objection to such inclusion, and both parties have consented to its inclusion at the hearing.

Case name:

Big Banana Holding Company Ltd

v

Kenroy Callica

**[ANUHCVP2022/0012]
[Formerly ANULTAP2019/0003]**

ANTIGUA AND BARBUDA

Date:

Thursday, 26th March 2026

Coram:

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Justin L. Simon KC, with him Ms. Shannon Potter

Respondent:

Mrs. Eunica Anthony-Victor

Issue:

**Civil Appeal - Industrial Court - Employment Law -
Sections C9(3)(b), C9(4), and C41 Antigua and**

Barbuda Labour Code (Cap 27) - Notice Pay – Severance - Whether the learned trial judge erred in awarding the employee one (1) month’s pay in lieu of notice, notwithstanding that the employee was paid on a fortnightly basis - Whether the learned trial judge erred in law in holding that the employee was entitled to one (1) month’s pay per year of service for loss of statutory protection, in circumstances where, in the absence of a collective agreement, a non-managerial employee is entitled under the Labour Code to one (1) day’s pay for each month of service - Whether the learned trial judge erred in awarding damages for immediate loss, given that the employee was operating his own business at the time of termination and therefore had a headstart in securing alternative employment/source of income

Type of order:

N/A

Result/Order:

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Reason:

N/A

Case name:

**Allan LeBlanc
v
Althea James for Sylvia Benoit
[ANUHCVP2025/0004]
ANTIGUA AND BARBUDA**

Date:

Thursday, 26th March 2026

Coram:

The Hon. Mr. Trevor M. Ward, Justice of Appeal

The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mr. Brian Cottle, Justice of Appeal [Ag.]

Appearances:

Appellant: **Ms. Talia DaCosta**

Respondent: **Mr. Peyton Knight**

Issue:

Interlocutory appeal - Rule 62.13(e) and 26.2 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 - Exercise of discretion - Whether the learned judge erred as a matter of fact and/or law in the exercise of his discretion when he vacated the trial dates and awarded costs against the appellant in the absence of any written or oral application by either party to vacate the said trial or to seek any other relief - Whether the learned judge erred as a matter of fact and/or law in the exercise of his discretion when he vacated the trial dates and awarded costs against the appellant without giving the appellant a reasonable opportunity to make representations - Court's decision to make orders of its own initiative - Whether the learned judge erred as a matter of fact and/or law in the exercise of his discretion when he vacated the trial dates and awarded costs against the appellant without giving the parties at least 7 days notice of the date, time and place of the hearing which took place on 23rd January 2025 - Whether the learned judge erred as a matter of law and/or fact in awarding costs for the respondent and their witness' travel expenses against the appellant

Type of order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Costs will be agreed between the parties within 7 days or assessed upon application.**

Reason:

Before the Court was a notice of appeal filed on 19th May 2025, seeking to set aside the order of the learned judge dated 23rd January 2025 in which he vacated the trial date of 28th January 2025 and awarded the respondent costs which were subsequently assessed in sum of \$2,000.00 plus reasonable travel costs incurred by the respondent in respect of the vacated trial dates, to be paid within 21 days.

The Court noted the appellant's submissions that there was no application by either side to vacate the trial dates but disagreed that this was the case. The transcript revealed that counsel for the appellant was aware, that by filing the affidavit which called into question the qualifications of the court appointed expert, this would have had the effect of causing the trial dates to be vacated. When pressed repeatedly by the learned judge, counsel confirmed that this was what it was leading to and promised to file the application in relation to the respective affidavit by the next day. This was an undertaking given by counsel in open court and it formed part of the judge's order. To date no application has been filed. The Court was satisfied from the transcript that the judge when confronted by the implicit effect of the affidavit filed by the appellant which would have necessitated a full hearing, he acceded to the appellant's implicit application to vacate the trial dates and in doing so did not act on his own volition. Concerning costs, counsel agreed that costs should be assessed. The parties had a reasonable opportunity to make representations and in fact, did

make representations and costs inevitably followed as a natural consequence of vacating the trial dates. The learned judge also noted that there was a lurking question as to why the affidavit was so late in the coming.

The Court noted the overriding objective for dealing with cases justly and was of the view that in allocating a reasonable share of the court's resources to deal with this matter justly, the learned judge was correct to act as he did in making the respective orders which would have facilitated a further hearing of the application which was to be filed by the appellant by 24th January 2025. The Court considered it unacceptable that to date the appellant has not complied with any of the orders made, which were required to facilitate the affidavit which was filed by the appellant on the eve of trial and had triggered a case management hearing which the learned judge was obligated to schedule a mere six days before trial. For these reasons, the Court dismissed the appeal and ordered that the costs of the appeal be agreed between the parties within seven days or assessed upon application.

Case name:

**Neal Harding
v
JSN Development Group Limited
[ANUHCVP2025/0029]
ANTIGUA AND BARBUDA**

Date:

Friday, 27th March 2026

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Applicant: Mr. Hermann Boeddinghaus KC with him, Mr. Andrew O’Kola

Respondent: Mr. Alexander Cook KC with him, Ms. Cheryl-Lee Bolton and Ms. Kenhiah Gordon

Issue: Application for stay of appeal - Rules 62.24 and 26.1(2)(q) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (“CPR”) - Stay pending conclusion of debt claim and payment of interim cost – Whether pursuing the debt claim and appeal at the same time constitutes an abuse of process - Whether interim costs ought to be granted - Whether the appeal would be rendered futile if the stay is not granted - Application for an extension of time to file and serve written submissions in opposition to the appeal - CPR rule 26.1(2)(k) - Whether the extension sought is in keeping with the overriding objective - Whether there is good reason for the failure to comply with the Court’s initial orders - Whether the extension would be prejudicial to the respondent

Type of order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The application for a stay of appeal and payment of costs is dismissed.
2. The time is hereby extended and the submissions filed by the applicant on 17th March 2026 are deemed to be properly filed.

3. Costs are reserved to the appeal.

Reason:

Before the Court was an application filed on 10th February 2026, seeking a stay of appeal, payment of interim costs and extension of time to file written opposing submissions in the appeal. The application sought an order that the proceedings in the appeal be stayed until the claim number ANUHCV2025/0148(the debt claim) has been disposed of and the appellant has made the payment of the respondent's costs in claim number ANUHCV2024/0505 or alternatively a payment on account of the respondent's costs, failing which the appeal be dismissed. The applicant also sought an extension of time to file and serve any written submissions in opposition to the appeal pursuant to rule 62.13(5) within 14 days after either the application for a stay has been determined or any stay has been lifted, or to 16th February 2026, whichever is later.

The respondent also filed an application on 2nd March 2026, seeking to vary paragraph 1 of the order of the single judge dated 17th February 2026, pursuant to CPR 62.20. That variation application sought to adjourn the hearing of the applicant's application to a later date or, alternatively, to have it heard in place of the appeal during the Court of Appeal sitting scheduled for the week commencing 23rd March 2026. However, as the substantive application for a stay was heard and determined on its merits at the hearing, the Court did not deal with the variation application substantively.

The Court considered the hearing bundle filed in respect of the matter, the legal submissions advanced by the parties in support of and in opposition to the application. In particular, the Court considered the applicant's submissions filed on 13th February 2026, the respondent's submissions filed

on the 13th February 2026 and the applicant's reply submissions filed on 4th March 2026. The Court also heard oral submissions and considered the bundle of authorities that had been advanced in support of the respective submissions. The Court was satisfied that the application should be dismissed, save for the request for extension of time. Therefore, the Court ordered that the application for a stay and interim costs be dismissed and that the time be extended and the written submissions be deemed properly filed. Costs were reserved in the appeal.

Case name:

Neal Harding

v

JSN Development Group Limited

[ANUHCVP2025/0029]

ANTIGUA AND BARBUDA

Date:

Friday, 27th March 2026

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal**

Appearances:

Appellant:

Mr. Alexander Cook KC with him, Ms. Cheryl-Lee Bolton and Ms. Kenhiah Gordon

Respondent:

Mr. Hermann Boeddinghaus KC with him Mr. Andrew O'Kola

Issue:

Interlocutory Appeal - Whether the learned judge erred in law and/or in his application of the law to the facts in finding that the respondent company had established a genuine and substantial dispute on the basis that the Promissory Note (and the Loan Extension and Modification Agreement) was allegedly void for illegality - Whether the learned judge erred in law and/or in his application of the law to the facts (and/or wrongly exercised his discretion) in finding that the Company had established a genuine and substantial dispute on the basis that the signature on behalf of the company on the Loan Extension and Modification Agreement had been alleged to be forged - Whether the learned judge's failure to identify or put to the parties the bases upon which he reached his findings constituted a serious procedural irregularity and/or a breach of the rules of natural justice - Whether the learned judge erred in law and/or in his application of the law to the facts in failing to hold that the Company had raised no genuine or substantial dispute in respect of the non-interest-bearing loan, and that the Strike Out Application ought therefore to have been dismissed irrespective of the matters raised in relation to loan governed by the promissory note and modification agreement – Whether the learned judge erred in law and/or in his application of the law to the facts (and/or wrongly exercised his discretion) in holding that it was not possible to substitute one of the other interested creditors in place of the appellant, as petitioner - Whether the learned judge erred in law, principle, and/or in the exercise of his discretion in awarding the respondent the costs of the Strike Out Application - Whether, in any event, the learned judge failed to give adequate reasons for his decision, thereby preventing the parties from properly understanding the basis upon which the decision was made

Type of order:

Directions

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appellant shall file written submissions in response to the respondent's notice filed on 19th December 2025, on or before 16th April 2026.**
- 2. The respondent shall file written submissions in reply on or before 24th April 2026.**
- 3. Judgment in the appeal is reserved pending receipt of the written submissions in relation to the respondent's notice.**

Reason:

The Court noted that the appellant was not afforded an opportunity to file a response to the respondent's notice filed on 19th December 2025 and as argued before the panel. Accordingly, after hearing Counsel for the parties in the appeal, the Court gave directions for the filing of written submissions in respect of the respondent's notice and reserved judgment in the appeal pending receipt of the written submissions.

Case name:

Anderson Carty

v

[1] The Industrial Court of Antigua and Barbuda

[2] The Attorney General

[ANUMCVAP2023/0015]

ANTIGUA AND BARBUDA

Date:

Friday, 27th March 2026

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

Appearances:

Appellant: Mr. Warren Cassell

Respondent: Mr. Zachary Phillips with Ms. Joy Dublin and Ms. Deshawn Browne

Issue: Magisterial civil appeal - Appeal against order that the appellant is guilty of indirect contempt of court - Whether the Industrial Court committed a specific illegality when it exceeded its jurisdiction by holding contempt proceedings against the appellant outside of a sitting of the court - Whether the court committed a specific illegality when it denied the appellant the right to natural justice and a fair process, by refusing the appellant his constitutional and/or other rights to have legal representation at the contempt hearing - Whether the court exceeded its jurisdiction, committed a specific illegality, and fell into legal error by assuming an “inherent” jurisdiction as a “court of statute,” and thereafter proceeded to conduct a contempt hearing against the appellant outside of a sitting, contrary to the Industrial Court Act - Whether the court further acted in an unjust and unfair manner, contrary to the principles of natural justice, by affording the appellant only seven (7) calendar days to seek legal advice and properly prepare a defence to the serious charge outlined in the Summons - Whether the court acted with specific illegality in concluding, by its Declaration and Order After Hearing in Contempt Proceedings, that the appellant was guilty of indirect

contempt - Whether the court acted with specific illegality and contrary to the rules of justice by ignoring that the appellant had filed an application before the High Court challenging the validity of the action, and nonetheless proceeded with the hearing in the absence of the appellant's legal representative, who had sought an adjournment for good and sufficient reasons - Whether the Declaration and Order of the Court, are the result from an illegal action, are therefore null and void and, moreover, highly perverse and of no legal effect - Whether the court acted in an illegal and perverse manner in bringing the proceedings and declaring the appellant guilty of indirect contempt at the end of an unjust and unfair hearing - Whether the court committed a specific illegality when the President of the court was allowed to sit as Chairman of the contempt proceedings against the appellant - Whether the court acted in an unjust, unlawful, and precipitous manner after the Summons was issued and while the appellant was continuing to provide representation before the Industrial Court on behalf of more than fifteen clients, by proceeding to vacate previously scheduled cases and postpone the delivery of judgments in all such matters - Whether the court acted in a perverse and unlawful manner when it sought to conduct itself in a way that perverted the course of justice and prejudiced the rights of numerous lowly employees, who are represented by the appellant in matters before it and have been waiting for years for their day in court and/or the delivery of judgments - Whether the court erred in finding the appellant guilty of contempt in a closed session, making orders without the appellant's knowledge, and serving them days later

Type of order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed.**
- 2. The decision/order of 3rd November 2023 is set aside.**
- 3. The appellant shall have its costs in the sum of \$2,000.00.**

Reason:

Before the Court was an amended notice of appeal filed on 1st October 2024 in which the appellant challenged the decision of the Industrial Court in which he was found guilty of indirect contempt of court, and ordered to (1) retract the said offending statements listed in the declaration within 14 days, (2) proffer a draft written apology for the approval of the court, (3) broadcast the retraction and settled apology live on the programme “Connecting with Dave Lester Payne” on Observer Radio 91.1 FM between 2:00 and 4.p.m.

The amended notice of appeal advanced a myriad of grounds addressing areas of excessive jurisdiction, unjust and unfair procedural errors taken during a contempt hearing and challenged the finding of indirect contempt of court as being perverse and illegal.

The Court reviewed the record of appeal filed by the appellant on 29th January 2026. The Court also reviewed the appellant’s submissions filed on 20th October 2025 and the respondent’s submissions filed on 23rd January 2026 as well as the appellant’s supplemental submissions filed on 6th February 2026. The Court noted the concessions effected in the submissions of the respondent in paragraphs 5 to 11 in which the respondent accepts that the Industrial Court of Antigua and Barbuda is a creature of statute, as confirmed by this Court in Farrel v The Attorney General High Court Civil

Appeal No. 2 of 1978 and does not possess the characteristics of the Supreme Court either before the commencement of the Constitution Order of Antigua and Barbuda or afterwards. It therefore follows that the Industrial Court may only exercise the powers as enshrined in the Industrial Court Act. Section 7 covers the power of contempt under the Act. Section 7(2)(a) of the Industrial Court Act and limits contempt powers to a scenario where the action is done while the Court is sitting. As noted in the facts of the matter, the Industrial Court was not sitting at the time the alleged contemptuous statements were made and accordingly section 7(2)(a) was not engaged, and neither was section 7(2)(b). Additionally, there is no reference in the Act to indirect contempt as was referenced in the contempt order of 3rd November 2023. Thus, the respondent concluded that the Industrial Court did not have the legal authority to hold a contempt hearing on 3rd November 2023 and therefore exceeded its jurisdiction.

The contempt of court jurisdiction has been described as the most extreme means of dealing with those who disrupt court proceedings, breach court orders, or otherwise attempt to scandalise the court. It is a course of last resort, only to be exercised in the most serious of cases. It is common ground between the parties that the relevant jurisdiction in this case is that prescribed by section 7(2) of the Industrial Court Act and the Industrial Court Procedure Rules section 41.

The election to exercise the power to punish for contempt should not be undertaken without advising oneself not only of the relevant law, but also the applicable procedures to be adopted. The Court has considered the unequivocal concession advanced by the respondent and agreed with those conclusions. The Court also noted the very wise concession and withdrawal by the appellant of

grounds 11 and 12 which seemed to relate to circumstances and actions which followed the court's order on 3rd November 2023 and which were not directly contained in the said order.

Having regard to all of these matters, the Court is satisfied that the Industrial Court acted in excess of their jurisdiction on that occasion, and there are very real concerns which this Court could express with respect to the procedure adopted by the court. However, it is not necessary to do so, in light of the finding regarding lack of jurisdiction.