

THE EASTERN CARIBBEAN SUPREME COURT

COURT OF APPEAL SITTING

ANTIGUA AND BARBUDA

IN PERSON

Monday, 29th June – Friday, 3rd July 2026

JUDGMENTS

Case name:

Ramsbury Properties Limited

v

Ocean View Construction Limited

[NEVHCVAP2025/0009]

SAINT CHRISTOPHER AND NEVIS

Date:

Monday, 29th June 2026

**Coram for
delivery:**

**The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice
of Appeal**

Appearances:

Appellant:

**Dr. David Dorsett holding papers for Ms. Angela
Cozier**

Respondent:

**Ms. Jacqueline Walwyn holding papers for Ms.
Leonara Walwyn**

Issue:

**Interlocutory appeal – Civil Procedure – Rules 26.9
and 30.3 of the Civil Procedure Rules (Revised
Edition) 2023- Enforcement – Judgment Summons –
Procedural Irregularities – Discretion of the Court to
regularise defects – Whether Judgment Summons
invalidated by errors – Affidavit Evidence as to
information and belief – Whether affidavit**

inadmissible by reason that the affiant is not a director, officer or employee of the judgment creditor company – Committal Proceedings – Absence of Penal Notice – Validity of Committal Order – Essential prerequisites

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed except in relation to paragraph 8 of the 30th April 2025 order.**
- 2. The orders of the judge in the 30th April 2025 order, save and except the order at paragraph 8, are affirmed. The order at paragraph 8 of the 30th April 2025 order is set aside.**
- 3. The stay of execution granted by a single judge dated 24th June 2025 is discharged.**
- 4. The respondent shall have three-quarters of its costs to be assessed by a High Court judge within 21 days, if not agreed. The appellant shall have one-quarter of its costs to be assessed by a High Court judge within 21 days, if not agreed.**

Reason:

- 1. Procedural errors or failures to comply with the CPR do not invalidate proceedings unless the rules expressly so provide: CPR 26.9. The court is empowered to regularise procedural defects and make orders to put things right where doing so accords with the overriding objective and causes no prejudice. The errors in the judgment summons concerned miscalculations of accrued interest, fees and totals. The judgment summons nonetheless substantially complied with CPR 52.3 because it correctly identified the judgment debt, the date of judgment and the principal sum ordered to be paid. The defects were procedural and capable of correction. The judge was entitled to direct the filing of an amended judgment summons as a remedial case-management measure. Ramsbury suffered no prejudice because it had notice of the proceedings and the**

corrections reduced rather than increased the sums claimed.

Rule 26.9 of the Civil Procedure Rule (Revised Edition) 2023 applied; Phillips and another v Symes and others [2008] 2 All ER 537 applied; Colliers International Property Consultants v Colliers Jordan Lee Jafaar Sdn Bhd. [2008] EWHC 1524 (Comm) considered.

2. There is no rule of procedure requiring that an affidavit on behalf of a company be sworn by a director, officer or employee. CPR 30.3 permits affidavits on interlocutory applications to contain matters of information and belief provided that the source is identified. The legal clerk, Ms. Liburd, who swore the affidavit, explained that she managed the litigation file and derived information from the case file. Her affidavit complied with CPR 30.3. The fact that she was not a company officer did not render the affidavit a nullity. Ramsbury failed to demonstrate that cross-examination would have affected the material issues, which were matters of record and mathematical calculation. The judge independently reviewed the figures and did not rely on the erroneous statements contained in the affidavit.

Rule 30.3 of the Civil Procedure Rules (Revised Edition) 2023 applied.

3. The judgment summons remained a valid originating process notwithstanding the procedural errors. CPR 52.3 confers broad powers on the court hearing a judgment summons, including: powers to receive evidence of means, adjourn the proceedings and order payment of the judgment debt by instalments. The judge did not lose jurisdiction by directing that an amended judgment summons be filed.

The orders were made on the judgment summons already before the court, not on the yet-to-be-filed amended judgment summons. Accordingly, the judge was entitled to proceed with the hearing and make enforcement and case-management orders.

Rule 52.3 of the Civil Procedure Rules (Revised Edition) 2023 applied.

- 4. The transcript demonstrated that Ramsbury participated fully in the hearing, was afforded an opportunity to challenge the calculations, provide instructions to its legal practitioner and ultimately proposed the instalment payments that were incorporated into the order. The judge merely formalised an arrangement agreed between the parties. No error of principle or improper exercise of discretion occurred. In purporting to invoke the committal provisions under CPR 52.5 in the event of non-compliance, the judge erred. CPR 53.4 mandates compliance with specific procedural safeguards, including service of an appropriate order endorsed with a penal notice on the relevant officer of a corporate judgment debtor. Those prerequisites had not been satisfied on 30th April 2025 before the learned judge made the order. The inclusion of paragraph 8 was therefore legally erroneous and plainly wrong. That paragraph of the order must therefore be set aside.**

Rules 52.5 and 53.4 of the Civil Procedure Rules (Revised Edition) 2023 applied.

- 5. The effect of the Privy Council's dismissal of the appellant's appeal was that the judgment of Redhead J became final and binding on the parties. Where a judgment debt together with accrued interest and costs remains outstanding**

and unpaid, the underlying finding is enforceable and certain, and the appellant's dynamic contentions to the contrary lack merit.

Case name:

Xeno Origin Limited

v

Ma Kwok Leung

[BVIHCMAP2025/0024]

[BVIHCMAP2025/0026]

TERRITORY OF THE VIRGIN ISLANDS

Date:

Friday, 3rd July 2026

**Coram for
delivery:**

**The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of
Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

**Appearances
(via zoom):**

Appellant:

Mr. David Lord KC

Respondent:

**Mr. Alexander Cook KC with him Mr. Guy Oliff-
Cooper**

Issue:

Company law – Derivative actions – Section 184c of the BVI Business Companies Act, 2024 – Leave to bring proceedings – Retrospective leave – Whether proceedings commenced without prior leave of court are a nullity or merely defective – Distinction between “no appeal shall lie” in section 30(4) of the Eastern Caribbean Supreme Court (Virgin Islands) Act Cap. 89 and “not entitled to bring or intervene” in section 184c(6) – Whether section 184c(6) speaks to existence of proceedings or to capacity and standing of member – Whether BVI court has jurisdiction to declare foreign derivative proceedings in nullity – Absence of express power

to “continue” extant proceedings under section 184c unlike English equivalent under section 261(1) of the Companies Act 2006 – No retrospective power conferred by necessary implication or inherent jurisdiction – Whether absence retrospective power the member must apply anew for prospective leave – Mandatory considerations under section 184c(2) – Whether a failure to satisfy any one of the five considerations must result in dismissal of leave application - Whether certain of the five mandatory considerations can carry more weight than others - Whether court has the power to consider relevant considerations or factors in addition to the five mandatory considerations under section 184c(2) – Court’s overriding discretion to consider matters in the round - Full and proper as opposed to cursory examination of evidence required - Whether blanket prospective leave permissible without claim-by-claim analysis – Valuation evidence - Whether independent professional valuation essential where claim premised on sale at gross undervalue - Third-party offers to purchase as cogent evidence indicative of market value - Litigation costs under section 184c(2)(d) - Adequate alternative remedies under section 184c(2)(e) - Whether personal claims of member and derivative claims of company in respect of different losses overlap

Result/Order:

IT IS HEREBY ORDERED THAT:

1. Appeal 26/2025 is dismissed with costs to Xeno/the Receivers in that appeal, such costs to be assessed by a judge of the Commercial Division of the High Court in the Virgin Islands, if not agreed by the parties within 30 days from the date of delivery of this judgment.
2. Appeal No. 24/2025 is dismissed with costs to Mr. Ma, such costs to be assessed by a judge of the Commercial Division of the High Court of the Virgin Islands, if not agreed by the parties within 30 days of the date of delivery of this judgment.

Reason:

1. The expression “is not entitled to bring or intervene” in section 184C(6) of the BCA and the expression “no appeal shall lie” in section 30(4) of the Eastern Caribbean Supreme Court (Virgin

Islands) Act Cap. 89 are not synonymous and do not convey the same meaning or direct the same legal consequence. The words “no appeal shall lie” speak to the non-existence of an appeal filed without leave, rendering any such “appeal” a nullity incapable of being revived by a subsequent grant of leave. The words “is not entitled to bring or intervene” in section 184C(6) speak to the capacity and standing of a member to bring or intervene in proceedings in the name and on behalf of the company; but say nothing as to the legal status of purported derivative proceedings brought without the leave or permission of the court under section 184C of the BCA, and do not declare or make clear that such proceedings are a nullity. Furthermore, the BVI Court has no extra-territorial jurisdiction to declare foreign derivative proceedings a nullity, and derivative proceedings brought by a member without leave whether in the BVI or in a foreign jurisdiction are defective but not a nullity. Proceedings brought by a member without leave are either a nullity or they are not, regardless of the jurisdiction in which they have been commenced, and the same conclusion must apply to derivative proceedings brought without leave of the BVI Court whether in the BVI or elsewhere.

Patrick v Walker JM 1966 CA 217 considered; MacDonna v Richardson AXAHC VAP2005/0003 (delivered 29th June 2007, unreported) considered; Nigel Gray v Allan Leddra and others BVIHC (COM) 2011/0079 (delivered 4th April 2012, unreported) considered; Wong Ming Bun v Wang Ming Fan and others HCA [2014] 1 HKLRD 1108 considered; Novatrust Limited v Kea Investments Limited and Ors [2014] EWHC 4061 (Ch) considered.

2. There is no express power in section 184C of the BCA conferring on the court the power to grant retrospective leave to a member to continue derivative proceedings already commenced without prior leave. The language of the section is entirely prospective, employing only the

expressions “to bring”, “to intervene”, “to defend” and “to discontinue”. Section 184C is devoid of the words “to continue” found in the corresponding English provision, section 261(1) of the Companies Act 2006, which expressly empowers an English court to grant permission to continue derivative proceedings brought without the leave of the court. Further, no retrospective power is conferred by necessary implication, nor is it permissible to imply one. Any contention that such a power may be derived from the court’s inherent jurisdiction is misconceived, as the jurisdiction to permit a member to bring derivative proceedings is a creature of statute and does not exist at common law. The remedy available to a member who has commenced derivative proceedings without leave, is to apply anew for prospective leave placing before the court the material necessary to satisfy the mandatory considerations under subsection (2) and the requirements of subsection (3) of section 184C.

Re Saunders (A Bankrupt) [1997] Ch 60 considered; Re Testro Bros Consolidated Ltd [1965] VR 16 (Scholl J) considered; Wilton UK Ltd v Shuttleworth [2017] EWHC 2195 (Ch) considered; Lu Chung v Greater Achieve Limited BVIHC (COM) 2015/0140 (delivered 6th June 2017, unreported) considered; Seal v Chief Constable of South Wales Police [2007] UKHL 31 applied.

3. The five mandatory considerations set out in section 184C(2) of the BCA do not constitute a cumulative checklist of threshold requirements each of which must be independently satisfied before the court may grant leave to bring derivative proceedings. Properly construed, section 184C requires that each of these five factors or considerations must be considered by the judge in assessing the merits of and determining an application for leave to bring derivative proceedings. The opening words of section 184C(2) “without limiting subsection (1)” also make plain that the court’s discretion under subsection (1) is not confined to the five

specified mandatory factors and that additional relevant considerations may also be taken into account having regard to the circumstances of each case. However, a failure to satisfy any one of the five mandatory considerations under subsection (2) points, prima facie, towards refusal of leave, but does not automatically result in refusal. The court retains an overriding discretion to assess all relevant factors or considerations in the round. Moreover, the weight to be accorded to each of the five mandatory considerations in subsection (2) and to any additional relevant factor or factors, is a matter for the presiding judge having regard to the particular circumstances of each application. These five considerations under section 184C(2) are to be contrasted with the absolute preconditions under section 184C (3), which must be satisfied before leave can, in any circumstances, be granted. However, consideration (c) - whether the proceedings are likely to succeed - is of paramount importance and is likely to be decisive.

Basab Inc v Accufit Investment Inc and AnorBVIHCMAP2014/0020 (delivered 9th November 2015, unreported) followed; **Nigel Gray v Allan Leddra and others** BVIHC(COM) 2011/0079 (delivered 4th April 2012, unreported) considered; **Glory Advance International Limited v Merit Fortune Holdings Ltd** BVIHC(COM) 2015/0090(delivered 8th July 2016, unreported) considered; **ZVI Dekel v Clerkenwell Lifestyle Limited** BVIHC(COM) 2024/0466 (delivered 4th March 2025) considered; **Cream Holdings Ltd v Banerjee** [2005] 1 AC 253 considered.

4. The correct threshold test for whether derivative proceedings are 'likely to succeed' under section 184C(2)(c) of the BCA, is whether it is more probable than not that the proceedings will succeed. In this regard, the court is required to carry out a full and proper as opposed to a cursory examination of the evidence before it, evaluating that evidence alongside the arguments and counterarguments advanced by

both parties in relation to the merits of each cause of action. The court must consider the elements of each pleaded cause of action; the nature, cogency and probative value of the evidence adduced by the applicant; any counter-evidence advanced by the respondent; the ingredients of and principles of law applicable to each cause of action, including expert evidence of foreign law where relevant; and any unassailable defence (such as a limitation plea) which might render a claim hopeless notwithstanding its apparent merits on paper. However, in carrying out this exercise, the court must not conduct a mini trial.

5. Where a judge has used words like “possible” and “possibly” in describing the likely success of individual derivative claims, an appellate court must carefully read the lower court’s judgment as a whole to determine whether the correct threshold test of ‘more probably than not’ was in fact applied. An isolated use of such words do not necessarily lead to the inescapable conclusion that the judge applied a lower standard than that prescribed in *Basab Inc v Accufit Investments Inc and Anor*. In the instant matter, on a proper reading of the judgment, the learned judge clearly identified and had in mind the correct threshold test of “likely to succeed” set out in *Basab* and his use of the terms “possible” and “possibly” when read in the particular context do not demonstrate that he applied a lower test or lower standard in determining whether those causes of action were likely to succeed.

Basab Inc v Accufit Investment Inc and Anor BVIHCMAP2014/0020 (delivered 9th November 2015, unreported) followed.

6. Where the underlying basis of a derivative claim is an allegation of a sale at a gross undervalue, it is not an absolute requirement that an applicant for leave under section 184C must, at this stage, adduce evidence of an independent professional

valuation of the relevant asset or property as at the date of the impugned sale. While such evidence is to be preferred and would best assist the court in carrying out the gatekeeper exercise under section 184C to ensure that weak or frivolous claims are not permitted to be brought in the name and on behalf of a company by a member or members, an applicant/member may adduce and rely on other cogent and reliable documentary evidence indicative of the market value of the relevant assets at or sufficiently proximate in time to the date of the impugned sale. This may include bona fide third-party offers to purchase the same assets, provided those offers are from reputable and substantial entities or persons and are not shown to be fabricated or otherwise unreliable. The court on a section 184C leave application is not required to determine the market value of the assets to the standard applicable at trial and need only be satisfied that there is sufficient cogent evidence indicative of value to support a finding that a claim based on a sale at a gross undervalue is more probable than not to succeed. In carrying out its sifting and gatekeeper function under section 184C of the BCA, the court is required to assess the merits of each pleaded or intended cause of action in determining under section 184C(2)(c) whether the derivative proceedings meet the threshold test of 'likely to succeed.' Furthermore, it is not correct as a matter of principle to simply grant blanket leave across a suite of claims on the strength of findings made only in relation to some of them. However, where the various causes of action are closely interrelated and substantially turn on the same underlying questions of fact and law, a judge may be satisfied that each has been sufficiently addressed without conducting a wholly separate analysis of every element of every cause of action, provided the judgment as a whole demonstrates that the judge's mind was directed to the distinct claims. An allegation of unlawful means conspiracy is sufficiently pleaded where the statement of claim identifies the parties alleged to have combined, the

unlawful means said to have been employed, and the intent to injure; and it is possible for the conspiracy claim to be regarded as less probable of success than a claim in negligence and yet still satisfy the “more probable than not” standard.

Basab Inc v Accufit Investment Inc and Anor BVIHCMAP2014/0020 (delivered 9th November 2015, unreported) followed; **Royal Brunei Airlines Sdn Bhd v Tan** [1995] 2 AC 378 considered; **Kuwait Oil TankerCo SAK v Al Bader**(No 3) [2000] 2 All ER (Comm) 271 (CA) considered.

7. In considering consideration (d) of section 184C(2)- the costs of the proposed derivative proceedings in relation to the relief likely to be obtained, the court is not in every case required to have before it a formal litigation budget or costs schedule. Where it is self-evident from the material before the court that the likely recoveries, should the derivative claims succeed, would far exceed any reasonable estimate of the likely litigation costs, it is open to the judge to conclude that consideration (d) has been satisfied to the requisite standard, without the production of a formal costs budget. The court may also take into account a personal indemnity as to costs offered by the applicant/member where there is a proper basis to regard it as genuine and where the member has demonstrated the capacity to fund the litigation.

Glory Advance International Limited v Merit Fortune Holdings Ltd BVIHC(COM) 2015/0090 (delivered 8th July 2016, unreported) considered.

8. Where the derivative claim brought by a member on behalf of the company and the personal claims brought by that member in his own capacity are in respect of different losses suffered in different capacities, the former in respect of loss to the company and the latter in respect of loss suffered personally as guarantor and chargor, the availability of the personal claim

does not constitute an adequate alternative remedy to the derivative claim for the purposes of consideration (e) of section 184C(2) of the BCA.

Case name:

**Foued Issa
v
Sorrel Consulting Ltd
[DOMHCVAP2024/0003]
DOMINICA**

Date:

Thursday, 2nd July 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. Gertel Thom, Justice of Appeal [Ag.]**

**Appearances
(via zoom):**

Appellant:

Ms. Dawn Yearwood Stewart

Respondent:

Mrs. Noelize Knight Didier

Issue:

Contract – Consultancy agreement – Breach of contract – Construction and renovation works – Case management decision – Extension of time – Relief from sanctions – Witness statements – Court-appointed expert witness – Whether witness statement of engineer rejected as court-appointed expert could nevertheless be admitted as evidence of fact – Whether learned master erred in refusing extension of time and relief from sanctions – Whether witness of fact may give opinion evidence – Distinction between factual and expert evidence – Appellate restraint in reviewing case management decisions – CPR 26.1(k), CPR 26.8 and CPR 29.11 – Overriding objective

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against the decision of the learned master dated 25th January 2024 is allowed.
2. The decision of the learned master in the court below is set aside.
3. The application for extension of time is granted and the appellant is granted leave to file the Witness Statement of Vivian Trotter, de benne esse, out of time within 14 days of the date of this order, that is by 17th July 2026.
4. The respondent is to pay costs of the appeal to the appellant within 21 days of the date of this order, failing which the costs ought to be assessed in accordance with the provisions of the CPR.

Reason:

1. Although an appellate court will exercise considerable restraint before interfering with the exercise of a case management discretion, such restraint does not prevent appellate intervention where the court below has failed to take account of relevant considerations, has taken account of irrelevant considerations or has otherwise erred in principle in the exercise of its discretion. The learned master's decision on the Extension and Relief Application was a case management decision attracting appellate restraint. However, the learned master failed to consider a number of matters which were relevant to the exercise of her discretion, including the factors prescribed by CPR 26.8, the explanation advanced by the appellant for the delay, the effect which refusing relief would have on the appellant and the interests of the administration of justice. In those circumstances, the learned master's decision exceeded the generous ambit within which reasonable disagreement is possible and was plainly wrong.

Michael Dufour and Others v Helenair Corporation Limited and Others(1996) 52 WIR 188 applied; Phonographic Performance Ltd v AEI Rediffusion Music Ltd [1999] 1 WLR 1507 considered; John Oliver Dyrud v Palmavon

Jasamin Webster et al AXAHCVAP2021/0010 (delivered 27th April 2022, unreported) applied.

2. In determining whether to grant an extension of time and relief from sanctions, the learned master was required to consider the provisions of CPR 26.1(2)(k), CPR 26.8 and CPR 29.11 and to exercise her discretion in a manner consistent with the overriding objective. The learned master failed to consider whether the application had been made promptly, whether there was a good explanation for the delay, the prejudice to the parties, the effect which refusing relief would have on the appellant's entitlement to a fair trial, the interests of the administration of justice and the appellant's prospects of success. These were all matters which the learned master was obliged to consider in the exercise of her discretion.

Carleen Pemberton v Mark Brantley SKBHCVAP2011/009 (delivered 14th October 2011, unreported) applied; Joseph Hyacinth v Allan Joseph GDAHCVAP2015/0025 (delivered 20th June 2016, unreported) applied; Westburg Anstalt v Profitstar Anstalt BVIHCMAP2013/0020 (delivered 4th February 2014, unreported) considered.

3. On the evidence before the learned master, the delay in filing the application was not fatal. Whether time was calculated from the witness statement deadline or from the date of the Expert Witness Order, the delay was not inordinate. Further, the appellant's case was that he had awaited the court's determination of the expert witness issue before seeking to rely upon Mr. Trotter as a witness of fact. The proceedings had not progressed beyond an early stage of case management and had in fact been stayed pending mediation. In those circumstances, the admission of the witness statement would not cause irreparable prejudice to the respondent. Conversely, refusal of the application would deprive the appellant of a witness whom he regarded as central to the proof of his claim. The

interests of justice therefore favoured the grant of relief.

4. The learned master approached the application on the erroneous basis that because Mr. Trotter had not been selected by the court to act as the court-appointed expert witness, he ought not thereafter to be permitted to give evidence as a witness of fact. The case at bar did not present a situation in which the appellant sought to circumvent the court's earlier ruling by reintroducing Mr. Trotter as an expert witness through the back door. Rather, the appellant sought to rely upon Mr. Trotter in relation to matters personally observed by him during site visits and inspections undertaken at the property. The concerns which informed the learned master's decision not to appoint Mr. Trotter as the court-appointed expert arose because of his previous involvement in the project and his familiarity with the works. Those same matters were, however, capable of rendering him a potentially important witness of fact. The refusal to appoint Mr. Trotter as the court-appointed expert did not determine whether he could properly give factual evidence at trial.
5. Although the general rule is that opinion evidence is inadmissible, a witness of fact is not rendered incapable of giving evidence merely because he possesses particular qualifications, expertise or experience. A factual witness who possesses expertise may, in appropriate circumstances, give evidence of matters personally observed by him and may offer opinions reasonably related to facts within his knowledge or comments arising from those facts within his area of competence. There is no rigid rule that a witness statement of fact cannot contain opinion evidence. What is objectionable is according such evidence the same status as expert evidence. The proper approach is generally to admit the evidence and leave issues of weight to be determined by the trial judge.

Anthony Martin v Lime Dominica Ltd DOMHCV2013/0407 (delivered 17th February 2020, unreported) applied; Joseph W. Horsford v Geoffrey Croft ANUHC VAP2014/0006 (delivered 22nd October 2014, unreported) applied; Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd (No. 6) [2008] All ER (D) 04 applied; Polypipe Ltd v Davidson[2023] EWHC 1681 (Comm) followed.

- 6. Questions concerning the admissibility, veracity, relevance and weight of the evidence contained in the Trotter draft witness statement were matters which ought properly to have been left to the trial judge. Paragraphs of the draft witness statement referred to site visits undertaken by Mr. Trotter, observations made by him concerning the condition and completeness of the works, and matters arising from documents reviewed and conversations held in connection with the project. Whether those matters were admissible, whether they constituted factual evidence, whether they amounted to impermissible expert evidence and what weight ought to be attached to them were all matters falling within the province of the trial judge and not the case management court.**
- 7. The learned master erred in principle by elevating the reasons which informed her earlier Expert Witness Order into an exclusionary rule preventing the admission of the Trotter draft witness statement. In doing so, she wrongly treated the fact that Mr. Trotter had not been appointed as the court expert as determinative of the admissibility of his proposed evidence as a witness of fact. The learned master thereby intruded upon the proper role of the trial judge and failed to have regard to the authorities governing the admissibility and treatment of opinion evidence given by factual witnesses.**
- 8. The respondent's submission that the Extension and Relief Application amounted to an abuse of process could not be sustained. The circumstances of the appellant first seeking to**

have Mr. Trotter appointed as an expert witness and thereafter seeking leave to rely upon him as a witness of fact did not amount to an abuse of process known to the law and did not represent an affront to the administration of justice. The appellant's conduct did not involve an attempt to relitigate a matter already determined nor did it constitute a misuse of the court's procedures.

Henderson v Henderson (1843) 3 Hare 100 considered; Panayiotou & others v Sony Music Entertainment (UK) Ltd [1994] 1 All ER 755 distinguished; Bremer Vulkan Schiffbau Und Maschinenfabrik v South India Shipping Corporation [1981] 1 All ER 289 distinguished.

9. Having regard to the nature of the appellant's pleaded case, the admitted existence of the consultancy contract, the relevance of Mr. Trotter's observations to the issues arising from the pleadings, the stage reached in the proceedings, the absence of irremediable prejudice to the respondent and the overriding objective, the learned master's refusal to extend time and to grant relief from sanctions was plainly wrong. The appellant was therefore entitled to an extension of time to file and rely upon the Trotter draft witness statement and the same ought to be admitted into evidence de bene esse, subject always to the trial judge's control over questions of admissibility, relevance and weight.

APPLICATIONS & APPEALS

Case name:

BOI Bank Corporation

v

Jose Rafael Padron Salazar

[ANUHCVP2023/0039]

ANTIGUA AND BARBUDA

Date: Monday, 29th June 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal

Appearances:

Appellant/Respondent: Mr. Satcha Kissoon with Ms. Jenell Gibson

Respondent/Applicant: Dr. David Dorsett

Issue: Application to dismiss appeal - Whether the appeal should stand dismissed since the appellant has done nothing to advance the hearing and determination of the appeal since its filing on 16th November 2023 - Whether the appellant's inactivity constitutes an abuse of process and renders the appeal liable to be dismissed under the court's powers in CPR 26.3

Application for stay of proceedings - CPR 62.18, 62.17(1) and 26.1(2)(q) - Section 117(2) and (3) of the International Banking Act, 2016 (No. 6 of 2016) - Whether the appellate proceedings constitute a proceeding against a licensed financial institution within the scope of section 117 of the International Banking Act, 2016 - Whether proceedings in the court below should be stayed with effect from 7th May 2026, being the effective date of the appointment of the Official Administrator, pending the termination of the official administration of BOI Bank Corporation pursuant to the International Banking Act, 2016 - Whether the continuation of appellate proceedings during the period of administration of the Bank would diminish the assets available for distribution to depositors and

creditors, all of whom are obliged to await the outcome of the resolution process contemplated by the Act - Whether a stay preserves the status quo without prejudicing the respondent's underlying claim

Type of Order:

Directions

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the applicant in the strike out application to file an application for leave to continue these proceedings, such application to be filed and served on or before 15th July 2026.**
- 2. The respondent shall file a reply to the application on or before 27th July 2026.**
- 3. Both parties shall file and serve written submissions with authorities on the proper construction of section 117 of the International Banking Act, 2016 (No. 6 of 2016) on or before 27th July 2026.**
- 4. Upon compliance by the parties with orders 1, 2, and 3 above, the Chief Registrar shall list the matter for continuation.**

Reason:

Before the Court were two applications, an application to dismiss the appeal filed by the respondent on 15th September 2025 and an application for a stay of proceedings filed by the appellant on 25th June 2026.

In respect of the application to dismiss the appeal, the respondent sought an order that the appeal filed on 16th November 2023 be dismissed and costs be paid to the respondent in the sum of US\$1,500.00.

The application, which was supported by the affidavit of Benetha McNabb filed on 17th November 2025, averred that since filing the appeal the appellant had done nothing to advance its hearing and determination; the appellant initiated a proceeding without the intention of pursuing it which constitutes an abuse of the process of the court; further, the inactivity constitutes an abuse of the court's process which renders the appeal liable to be dismissed under CPR 26.3. The applicant/respondent did not file written submissions in support of this application as required by rule 1.2 of Practice Direction 62(D) No. 2 of 2024 (Second Reissue).

The application for a stay of proceedings was filed by the appellant, acting by Mr. Christopher Sambrano in his capacity as the Official Administrator of BOI Bank Corporation (the "Official Administrator"), seeking orders that these proceedings be stayed pursuant to section 117(2) and (3) of the International Banking Act, 2016 (No. 6 of 2016) or, alternatively, pursuant to the inherent jurisdiction of the Court with effect from 7th May 2026, pending the termination of the official administration of BOI Bank Corporation pursuant to the International Banking Act, 2016; liberty to all parties to apply on notice to vary or discharge the stay if there is any material change in circumstances; and no order as to costs. An affidavit of Christopher Sambrano was filed on 26th June 2026 in support of this application. The applicant/appellant did not file written submissions in support of this application as required by rule 1.2 of Practice Direction 62(D) No. 2 of 2024 (Second Reissue).

A notice of opposition to that application was filed on 26th June 2026 on the ground that the stay of proceedings arising by operation of section 117 of the International Banking Act, 2016 is a stay of

proceedings against the appellant and not a stay of proceedings by the appellant. The respondent also filed submissions opposing the application for a stay on 26th June 2026.

At the hearing, the respondent made an oral application for leave to file an application pursuant to section 117(3)(b) of the International Banking Act, 2016 because his application to dismiss the appeal had been overtaken by events.

The Court heard and considered oral submissions in respect of both applications and noted that interesting points were raised which require careful consideration, and for which written submissions and authorities in support would be helpful.

Accordingly, the Court granted leave to the respondent to file an application pursuant to section 117(3)(b) of the International Banking Act, 2016; leave to the appellant to respond thereto; ordered that written submissions be filed and served on the proper construction of section 117 of the International Banking Act, 2016 by both parties; and directed that the matter be listed by the Chief Registrar for continuation upon the parties' compliance with these directions.

Case name:

[1] Antigua Flight Training

[2] Norman Aviation Flight Training Academy Inc

v

Antigua and Barbuda Airport Authority

[ANUHCVAP2025/0032]

ANTIGUA AND BARBUDA

Date:

Monday, 29th June 2026

Coram: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal

Appearances:

Appellants: Mr. Warren Cassell

Respondent: Mr. Hugh Marshall and Ms. Kema Benjamin

Issue: Interlocutory appeal - Appeal against order dismissing application for injunction with costs - Whether the learned judge erred in advising counsel for the appellants to file the application for an injunction within the existing substantive claim rather than by commencing a new matter - Whether the learned judge failed to consider that Antigua and Barbuda Airport Authority has no oversight, accountability or audits conducted by the Eastern Caribbean Civil Aviation Authority - Whether the learned judge failed to properly determine whether there were substantial reasons given by the respondent for revoking the visitor passes for the appellants, their students and employees - Whether the learned judge failed to properly determine whether reputational damage of the appellants was quantifiable and adequate as damages - Whether the learned judge failed to properly determine whether the balance of convenience was in favour of the appellants - Whether the learned judge failed to take into account that the respondent failed to present a valid aerodrome certificate

Type of Order: Oral decision with written reasons to follow

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Costs to the respondent to be assessed if not agreed within 21 days.**
- 3. The Court will provide written reasons for its decision, and the Chief Registrar shall advise the parties as soon as it is available.**

Reason:

Before the Court is an interlocutory appeal filed on 5th January 2026 against the Order of Byer J dated 31st October 2025 whereby the learned judge dismissed the notice of application for interim injunctive relief filed by the appellants on 19th September 2025 and awarded costs to the respondent to be assessed if not agreed within 21 days of the Order.

The appellants had sought an interim injunction pursuant to Part 17 CPR 2023 requiring the respondent to grant immediate access to students, directors, and employees to their compound in the airport's restricted area pending determination of the substantive claim. They also sought to restrain the respondent, Antigua and Barbuda Airport Authority from taking further steps to restrict their access.

The grounds of appeal advanced by the appellant are that:

- 1. The judge erred when she advised the claimants' attorney to file the application for the injunction in the substantive claim rather than as a new matter connected to the new cause of action as he had originally filed;**
- 2. The judge erred when she failed to consider that Antigua and Barbuda Airport Authority (ABAA)**

has no oversight, accountability or audits conducted by the Eastern Caribbean Civil Aviation Authority (ECCAA) and therefore the airports in Antigua and Barbuda are uncertified- there is and has not been any valid airport/aerodrome certificate since 1st November 2010. An aerodrome certificate being an official document issued by a civil aviation authority verifying that an airport meets all required safety, operational, and design standards for aircraft operations.

3. The judge erred in law/misdirected herself by failing to properly determine:
 - (a) whether there were substantial reasons given by the respondent for revoking the visitor passes for the appellants and their students and employees?
 - (b) whether reputational damage of the claimants was quantifiable and adequate as damages?
 - (c) whether the balance of convenience lay in granting the injunction in favour of the appellants?
4. The judge failed to take into account that the respondent has failed to present a valid aerodrome certificate.

The sole issue for determination is whether the learned judge erred in the exercise of her discretion by refusing the application for the interim injunctive relief. The applicable test in relation to the appellate court's approach to reviewing the exercise of judicial discretion is well established and set out in the case of *Michel Dufour and others v Helenair Corporation Ltd* (1996) 52 WIR 188. The appellate court will seldom interfere with the exercise of a judicial officer's exercise of discretion and will do so only if the Court is satisfied that the judge erred in principle by either (1) failing to take into account relevant factors and considerations or by taking into account or being influenced by irrelevant factors

and considerations and (2) that as a result of the error or the degree of the error in principle, the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.

The Court having considered the notice of appeal, the written submissions in support of the appeal and the record of appeal filed by the appellants on 27th February 2026, the hearing bundle and supplemental hearing bundle filed 15th June 2026 and 26th June 2026 respectively, the written submissions in opposition filed by the respondent on 22nd May 2026, the oral submissions of Counsel for the appellants and respondent, the Court is not persuaded that the learned judge erred in principle and consequently made a decision which was plainly wrong. In the circumstances, the Court unanimously agrees that the appeal should be dismissed. Costs to the respondent to be assessed if not agreed within 21 days.

The Court will provide written reasons for its decision, and the Chief Registrar shall advise the parties as soon as it is available.

Case name:

Ultramarine (Antigua) Ltd

v

Peter Cochrane of TUI/Traveltopia

**(Representing Inter Alia Sunsail (Antigua) Limited,
Sunsail (UK) Limited, and First Choice Holidays
and Flights Limited)**

[ANUHCVP2025/005]

ANTIGUA AND BARBUDA

Date: Tuesday, 30th June 2026

Coram: The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant/Appellant: Dr. David Dorsett

Respondent: Mr. Septimus Rhudd and Ms. Loreal Wilson

Issue: Application for conditional leave to appeal to His Majesty in Council - Section 122(2)(a) of the Constitution of Antigua and Barbuda - Whether the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council – Proposed appeal against order of the Court of Appeal dismissing appeal, affirming orders of the High Court judge and awarding costs to the respondent – Dismissal of adjournment application in a contempt hearing - Whether the Court of Appeal erred in holding that the dismissal of the adjournment application was fair - Whether the Court of Appeal erred in dismissing the applicant's appeal

Type of Order: Oral decision with written reasons to follow

Result/Order: IT IS HEREBY ORDERED THAT:
1. The application for conditional leave to appeal to His Majesty in Council is refused.

2. The Court will provide written reasons for its decision, and the Chief Registrar shall advise the parties as soon as it is available.
3. Costs are awarded to the respondent in the application in the sum of \$1750.00.

Reason: N/A

Case name: John Murphy
v
Carlisle Bay Antigua T/A Carlisle Bay Resort
[ANUHLTAP2019/0006]
ANTIGUA AND BARBUDA

Date: Tuesday, 30th June 2026

Coram: The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant/Respondent: Ms. Kema Benjamin

Respondent/Appellant: Mr. Warren Cassell

Issue: Application to strike out appeal – Want of prosecution – Inordinate and inexcusable delay in prosecuting the appeal – Failure of the respondent/appellant to take any steps to advance the appeal after filing the notice of appeal – Failure to apply for the transcript of the proceedings –

Whether the respondent/appellant's failure to prosecute the appeal demonstrates a lack of diligence and commitment to the appeal – Whether the notice of appeal ought to be struck out for want of prosecution – Costs

Application for an extension of time – CPR 26.1(2)(k) of the Civil Procedure Rules 2023 – Failure of the applicant/respondent to comply with the case management timeline for filing written submissions – Length of delay – Reasons for delay – Whether the failure to file the submissions within the prescribed time was intentional – Whether time ought to be extended to 18th June 2026 for the filing of the applicant's/respondent's submissions – Whether the submissions filed on 18th June 2026 ought to be deemed properly filed – Whether the appellant/respondent is likely to suffer prejudice if the application is granted – Costs

Type Order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for an extension of time filed on 19th June 2026 is granted.**
- 2. The submissions filed on 18th June 2026 are deemed properly filed.**
- 3. The notice of appeal filed on 4th October 2019 is struck out for want of prosecution.**
- 4. Costs to the applicant/respondent summarily assessed in the sum of \$1500.00.**

Reason:

Before the Court were two applications. The first in time was the notice of application filed by the

applicant/respondent on the 14th January 2026 to strike out the notice of appeal filed on the 4th October 2019 for want of prosecution (“the strike out application”) and the second and more recent was the notice of application for an extension of time to file the submissions of the applicant/respondent and to deem the submissions filed properly filed on the 19th June 2026 (“the extension of time application”).

Generally, applications were dealt with in the order in which they were filed. However, in the exercise of its case management powers pursuant to CPR 26.1(d), this Court determined that it would consider the extension of time application prior to dealing with the strike out application.

The extension of time application along with all previous documents filed in relation to the strike out application were served on the appellant/respondent through his Counsel on 19th June 2026. The Court had read the notice of application for an extension of time and the reasons advanced in the affidavit in support of Kiara Glynn filed herein where she stated that the reason for the late filing of the submissions is that the applicant/respondent was awaiting the factual matrix for the failure to prosecute the appeal by the appellant/respondent by way of an affidavit ordered to be filed on the 26th May 2026 by case management order dated 12th May 2026.

The appellant/respondent failed to comply with the said order and the filing date of the 26th May 2026 ordered for the applicant/respondent to file their submissions passed while they waited to see whether the appellant/respondent would comply. The applicant/respondent finally decided to file its submissions in the wake of there being no sign of any filings by the appellant/respondent.

Considering the principles applicable to applications for extension of time as set out in the *Carleen Pemberton v Mark Brantley* SKBHCVAP2011/009 (delivered 14th October 2010, unreported) *John Cecil Rose v Ann Marie Uralis Rose* SLUHCVAP2003/0019 (delivered 22nd September 2003, unreported) the Court was satisfied that the applicant/respondent had met the threshold to be granted an extension of time. Therefore, the application filed the 19th June 2026 was granted and the submissions filed on the 18th June 2026 were deemed properly filed.

The strike out application related to a notice of appeal filed on 4th October 2019 against a judgment of the Industrial Court delivered on the 26th August 2019. The strike out application was made on 14th January 2026 on the grounds that since the filing of the notice of appeal, over 6 years prior to the filing of the application, the appellant had taken no further steps to prosecute the appeal and that the delay had been inordinate and inexcusable. Indeed, there was confirmation by the Registrar of the Industrial Court on the 3rd October 2025 (the exhibit KG1 attached to the affidavit in support of the application to strike out deposed to by Kiara Glynn) that there had been no request made for the transcript of the proceedings in the appeal.

The appellant/respondent had in fact not even taken any steps in relation to the strike out application although counsel appeared on behalf of the appellant/respondent at the case management hearing conducted by the Court on the 12th May 2026. By the order of the Court, the appellant/respondent was given the opportunity to file an affidavit in opposition and submissions in opposition to the application. The appellant/respondent had not availed himself of either opportunity.

It was clear to the Court that the appellant/respondent had no intention to oppose the application and the application remained unopposed before this Court. The appellant/respondent indicated to the Court on his feet at the hearing of the matter that he had filed documents in relation to the applications on 25th June 2026 outside of the timelines as ordered in the case management order dated 12th May 2026 at which Mr. Cassell was present. Mr. Cassell confirmed to the Court that there was no service on the applicant/respondent and no application for an extension of time was made to allow for the late filings. The Court was also not in receipt of any of the documents which were allegedly filed. As the Court had indicated, it would not consider the documents belatedly filed as this manner of advocacy and conduct of litigation cannot be countenanced.

There was therefore no explanation given to this Court for the failure of the appellant/respondent to progress the appeal, even though the Court is cognisant that CPR 62.12(1)(c) places the obligation on the court below to apply to the clerk or the officer of the court for certified copies of all the documents and record of the proceedings and once obtained notice must be given to the parties.

However, it has always been the case that upon filing an appeal, an appellant would or should take such steps as are necessary to progress the appeal, and if there are delays occasioned by the High Court office, then the appellant should take all such steps as are reasonable and practical to cause the requisite record to be produced and to show evidence of these steps when required to satisfy the Court that the appellant is interested in proceeding to have his appeal heard. This Court heard no such

evidence from the appellant/respondent in this case even though he was properly served and given the opportunity to do so.

Indeed, the appellant had not sought to present any argument on any of the matters with which a court must concern itself when considering the nuclear option of striking out a notice of appeal for want of prosecution as set out in *Icebird Ltd. v Winegardner* [2009] UKPC 24, namely: (1) the default has been intentional and contumelious disobedience to a peremptory order of the court or conduct amounting to an abuse of the court's process or, (2)(a) that there has been inordinate and inexcusable delay on the part of the appellant or his lawyers and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the respondent either as between themselves and the appellant or between them and a third party.

Rather the Court had seen the submissions of the applicant/respondent and found favour with the clear prejudice to them for the continued appeal being in abeyance and that the delay by the appellant/respondent was indeed inordinate. The Court was satisfied that the conditions necessary for the striking out of a notice of appeal for want of prosecution had been met and the one factor which could have overridden these conditions, that is, strong prospects of success on the appeal, are not here apparent.

Accordingly, the notice of appeal filed on the 4th October 2019 was struck out for want of prosecution. Costs to the applicant/respondent summarily assessed in the sum of \$1,500.00.

Case name: George Ryan T/A City View Hotel

v

Dasworth Samuel

[ANUHCVP2021/0018]

[Formerly ANULTAP2018/0008]

ANTIGUA AND BARBUDA

Date: Tuesday, 30th June 2026

Coram: The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Shannon Potter and Mr. Justin L. Simon KC

Respondent: Mr. Wendel Alexander

Issue: Civil appeal - Appeal against order of the Industrial Court that the appellant shall pay the total sum of \$33,166.88 in full settlement of his claim - Unfair dismissal - Section C58(2) Antigua and Barbuda Labour Code Cap. 27 - Whether the Industrial Court erred in its interpretation and application of the test of reasonableness as provided for in section C52(8) of the Antigua and Barbuda Labour Code Cap 27. - Whether the Industrial Court having found that redundancy existed, erred in law in its determination that reasonable behaviour on the part of the appellant meant “reducing the employee’s responsibilities and duties” or “offering him a new

position with a reduced salary and fewer hours of work” - Whether the Industrial Court erred in failing to consider that the options given to the respondent were reasonable in all of the circumstances

Type of Order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case name:

Debby Looby

v

[1] Amberzine Joseph

[2] Stephanie Joseph

[3] Vonette Valarie Looby

[ANUHCVP2025/0014]

ANTIGUA AND BARBUDA

Date:

Wednesday, 1st July 2026

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor. M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Applicant:

In person

Respondents: **Ms. Talia N. DaCosta**

Issue: **Application to set aside order of the Court of Appeal
– Application for adjournment**

Type of Order: **Adjournment/Directions**

Result/Order: **IT IS HEREBY ORDERED THAT:**

- 1. The applicant's oral application for an adjournment is granted.**
- 2. The applicant will file and serve written legal submissions within 7 days of today's order, that is, by 13th July 2026.**
- 3. Unless the applicant files her submissions by 13th July 2026 and pays the costs granted under the Order dated 28th November 2025 in the sum of \$1500.00, together with the costs of today and costs thrown away consequent upon this application, summarily assessed by this Court in the sum of \$2000.00 by 13th July 2026, the application shall stand dismissed without further order of this Court.**
- 4. Provided only that there is full compliance with the terms of this Order, the application filed on 24th February 2026 will be set down for hearing on a date to be fixed by the Chief Registrar.**

Reason: **Before the Court was an application to set aside an Order of the Full Court dated 28th November 2025 made in the absence of the applicant. The application was supported by the affidavit of the applicant filed on 24th February 2026. No**

submissions were filed in support of that application. The respondents filed submissions in opposition on 8th June 2026.

At the commencement of the hearing of that application, the applicant, who is unrepresented, advanced an oral application for an adjournment indicating that she was unable to file and to comply with the necessary orders mandated in the Case Management Order dated 12th May 2026, and indicated that she was unable to do so because of personal difficulties involving a family member suffering from a medical condition.

Having considered the representations of the unrepresented litigant and having considered the representations made in opposition to this oral application, the Court granted the adjournment. However, the Court was satisfied that the adjournment should be predicated upon an unless order to make it clear that there must be strict compliance with the requirements set out in the Case Management Order and strict compliance with outstanding costs orders going forward.

The Court therefore granted the oral application for an adjournment and ordered the applicant to file and serve written legal submissions within 7 days, or by 13th July 2026. The Court also directed that unless the applicant files written legal submissions by 13th July 2026 and pays costs of \$1500.00 granted by Order dated 28th November 2025, together with costs of today and costs thrown away consequent upon the oral application for adjournment summarily assessed by this Court in the sum of \$2000.00 by 13th July 2026, the application shall stand dismissed without further order of this Court. It was further ordered that provided only that there is full compliance with the terms of this Order, the application filed on 24th February 2026 will be set

down for hearing on a date to be fixed by the Chief Registrar.

Case name:

[1] Antigua Flight Training Center, Inc.
[2] Norman Aviation Flight Training Academy
Inc.

v

[1] Anthony Greer
[2] Greer & Co. Solicitors
[ANUHCVP2020/0016]

ANTIGUA AND BARBUDA

Date:

Wednesday, 1st July 2026

Coram:

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor. M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal

Appearances:

Applicant/Respondent: Mr. Sylvester Carrott

Respondent/Applicant: Mr. Warren Cassell

Issue:

Application to strike out notice of appeal – Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023, Rules 62.10, 62.20 and 26.1(2)(w) – Whether the notice of appeal discloses any arguable ground of appeal, raises any reviewable error of law, or constitutes an abuse of the process of the Court – Whether the learned judge was correct in concluding that the claims filed by Antigua Flight Training Center Inc and Norman Aviation Flight Training Academy Inc disclosed no actionable loss, were procedurally abusive, and

sought damages that were unparticularised, unsupported and, in some instances, legally unrecoverable – Whether the appeal has a realistic prospect of success – Whether the appeal, as formulated, seeks to undermine or circumvent the principles of res judicata – Cross-application to amend the grounds of appeal – Rule 20.1(2) and (3) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 – Whether the application was made promptly – Whether the applicant would suffer prejudice if the application is refused – Whether the respondent would suffer prejudice if the application is granted – Whether any prejudice to the respondent can be adequately compensated by an award of costs and/or interest – Whether the hearing date can be maintained if the application is granted – Whether granting the application would be in the interest of justice and consistent with the Court’s overriding objective

Type of Order:

Oral Decision

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The application to strike out the notice of appeal filed 30th March 2026 being unopposed is granted.
2. The application to amend the grounds of appeal filed 22nd of April 2026 is withdrawn, discontinued and dismissed.
3. Costs to the applicant (the strike out application) being the sum of \$2,250.00.

Reason:

Before the Court were two applications: (1) an application to strike out the notice of appeal filed on 30th March 2026; and (2) an application to amend the grounds of appeal filed on 22nd April 2026.

Following the hearing of submissions on both applications, counsel for the respondent in the strike-out application, who was also the applicant in the application to amend, indicated that his client intended to concede the strike-out application, discontinue the application to amend, and withdraw the same.

Counsel for the applicant in the strike-out application, who was also the respondent in the application to amend, indicated his client's agreement to that course, provided that his costs were satisfied. The Court was satisfied that the parties had agreed costs in the sum of \$2,250.00 in respect of both applications.

Case name:	[1] Grace Norman T/A Antigua Flight Training Center [2] Norman Aviation Flight Training Academy Inc v Eastern Caribbean Civil Aviation Authority [ANUHCVP2024/0025] ANTIGUA AND BARBUDA
Date:	Wednesday, 1 st July 2026
Coram:	The Hon. Mde. Vicki Ann Ellis, Justice of Appeal The Hon. Mr. Trevor. M. Ward, Justice of Appeal The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
Appearances:	
Appellants:	Mr. Warren Cassell
Respondent:	Dr. David Dorsett
Issue:	Civil appeal – Adjournment

Type of Order:

Adjournment

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The matter is adjourned to the sitting of the Court of Appeal for the state of Antigua and Barbuda scheduled for the week commencing 30th November 2026 or on a date to fixed by the Chief Registrar in the event that the appeal can be accommodated at an earlier sitting.**
- 2. The parties are to file a supplemental authorities bundle within 14 days.**
- 3. The parties shall file and exchange supplemental written submissions on or before 17th August 2026.**

Reason:

The Court noted that the appeal is heavily grounded in the relevant statutory framework and observed that the Court was not provided with the full suite of relevant legislation necessary for the proper determination of the appeal. The Court observed that, in matters of this nature, it is insufficient for counsel to merely cite or reproduce specific statutory provisions upon which they seek to rely. Rather, the Court requires the entirety of the relevant legislation. The Court noted that the authorities bundle did not include essential legislation including the Civil Aviation Act, the Eastern Caribbean Civil Aviation Agreement as well as the current Flight Safety Regulations. The absence of these documents posed considerable difficulty for the Court in the proper adjudication of the appeal. In particular, the Court observed that the Eastern Caribbean Civil Aviation Agreement contains provisions relating to certain privileges and immunities, which may have significant implications

for this appeal. The Court further noted that the parties have not filed written submissions addressing the issue of immunity.

In the circumstances, the Court considered it appropriate to adjourn the appeal to afford the parties an opportunity to file a comprehensive supplemental authorities bundle containing the full suite of legislation relevant to the appeal, together with supplemental written submissions.

Case name:

Javan Akez

v

[1] Magistrate Dexter Wason

[2] The Commissioner of Police

[ANUMCRAP2023/0001]

ANTIGUA AND BARBUDA

Date:

Wednesday, 1st July 2026

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Trevor. M. Ward, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal**

Appearances:

Appellant:

No appearance and unrepresented

Respondents:

Ms. Rashida Jonas

Issue:

Magisterial Criminal Appeal - Reckless or dangerous driving - Section 55(1) Vehicle and Road Traffic Act Cap. 460 of the Revised Laws of Antigua and Barbuda - Whether the learned magistrate erred in fact and law by adjudging the appellant guilty of reckless driving – Whether the learned magistrate was biased – Whether the learned magistrate erred

in adjudging the appellant guilty of reckless driving in the absence of a point of impact being established from the evidence at trial – No appearance for the appellant

Type of Order:

Oral decision

Result/Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason:

On this matter being called for hearing, neither the appellant nor his counsel of record, Mr. Vere Bird III, was present.

The Court noted the following:

- 1. That the appellant failed to respond and appear when his name was called within the precincts of this Court at 12:26 p.m.**
- 2. The Deputy Registrar of the High Court indicated that she had been in communication with Counsel for the appellant who indicated that he would be travelling overseas and would not be able to personally attend court to prosecute this appeal. He requested that he be furnished with a Zoom link to appear.**
- 3. Counsel for the respondent indicated that she too had recently been in contact with Counsel for the appellant who represented that he would be travelling overseas but would apply to be heard online/virtually via the virtual (Zoom) platform.**
- 4. That the Deputy Registrar of the High Court indicated that she had provided Counsel for the appellant with the relevant electronic link to access the Court's virtual (Zoom) platform as he had requested.**
- 5. That after reviewing the participants online, the Chief Registrar confirmed that neither counsel for the appellant nor the appellant appeared online.**

6. That the Chief Registrar confirmed that the parties had been served with the notice of the hearing of the appeal.
7. The Court further noted that there was no evidence that Counsel for the appellant had filed an application seeking leave to appear at the hearing via the online platform rather than in person as had been directed in the notice of hearing.
8. Further, there is no application before the Court seeking an adjournment of the appeal.
9. That all of the necessary bundles were before the Court and there was no basis upon which the appeal could not properly proceed today.

The Court determined that given the non-attendance of the appellant and his counsel at the hearing and their non-appearance online via the Zoom platform when it is clear that the parties were aware of the hearing, and given that Counsel for the appellant had been in communication with the Registry (regarding a virtual appearance) and with Counsel for the respondent, that the appellant had not appeared to prosecute, the appeal and accordingly the appeal should be dismissed.

Finally, the Court expressed its displeasure at the discourtesy shown to the Court by Counsel for the appellant.

Case name:

Everton Welch

v

Attorney General

[ANUHCVP2021/0011]

ANTIGUA AND BARBUDA

Date:

Thursday, 2nd July 2026

Coram: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Applicant/Appellant: Dr. David Dorsett

Respondent: Mrs. Carla Brookes-Harris and Mr. Zachary Phillips

Issue: Application for leave to appeal to His Majesty in Council - Section 122(1)(c) of the Constitution of Antigua and Barbuda - Whether the proposed appeal concerns a final decision which involves a question as to the interpretation of the Constitution - Section 15(2) of the Constitution of Antigua and Barbuda - Right of defendant to be present at trial - Whether the Court of Appeal erred in its interpretation of section 15(2) of the Constitution of Antigua and Barbuda

Type of Order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. Leave is granted to the applicant pursuant to section 122(1)(c) of the Constitution of Antigua and Barbuda to appeal to His Majesty in Council against the judgment of the Court of Appeal delivered herein on 20th April 2026, subject to the conditions at paragraphs 2 and 3 of this Order.
2. The applicant do within 90 days from the date hereof enter into good and sufficient security in the sum of £500.00 (Five Hundred pounds sterling) to the satisfaction of the Registrar of the Eastern Caribbean Supreme Court for the due

prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of him not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay the costs of the appeal (as the case may be).

3. The applicant do within 30 days from the date hereof take the necessary steps for the purpose of procuring the preparation of the record and the settling of such record with the solicitors for the respondent and the certification of the record by the Registrar of the Court of Appeal in accordance with the Judicial Committee (Appellate Jurisdiction) Rules 2024 and any JCPC Practice Direction and for its transmission to the Registrar of the Judicial Committee of the Privy Council without delay when final leave to appeal has been granted.
4. Upon completion of the steps aforesaid, the applicant shall make an application to the Court for the grant of final leave to appeal to His Majesty in Council supported by the certificate of the Registrar that the security for costs ordered has been given within the time prescribed by this order to the satisfaction of the Registrar.
5. The costs of and occasioned by the Notice of Motion be costs in the appeal.

Reason:

The Court considered the notice of motion filed on the 8th of May 2026, the judgment of the Court of Appeal dated 20th April 2026, the submissions filed by the applicant on 8th May 2026, the respondent's submissions filed on 8th June 2026, the reply

submissions filed on 16th June 2026 and the oral submissions placed before this Court.

Insofar that the Court of Appeal has considered in its judgment delivered on 20th April 2026 that the appellant did not consent under section 15(2) but the trial was ultimately fair, the Court is of the view that this must be a question of interpretation of the Constitution under section 15(2) of the Constitution of Antigua and Barbuda and therefore leave is granted under section 122(1)(c).

Case name:

Global Bank of Commerce Limited

(In Official Administration)

v

Noreen Phillips Staines

[ANUHCVP2026/0004]

ANTIGUA AND BARBUDA

Date:

Thursday, 2nd July 2026

Coram:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. P. Nicola Byer, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Dr. David Dorsett

Respondent:

Mr. Hugh Marshall and Ms. Kema Benjamin

Issue:

Interlocutory appeal - Appeal against order of the learned judge lifting statutory stay for the purposes of determining liability - Section 117(2) and (3) of the

International Banking Act 2016 - Whether the judge erred in exercising a discretion in lifting the moratorium pursuant to section 117(3) of the International Banking Act, 2016 permitting the claim to proceed to trial on liability-whether in so ordering had failed to have regard or any proper regard to section 117(2) of the Act and the purported absolute sanction against matters concerning companies under administration

Type of Order:

N/A

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case name:

Neal Harding

v

JSN Development Group Limited

[ANUHCVP2025/0029]

ANTIGUA AND BARBUDA

Date:

Friday, 3rd July 2026

Coram:

**The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Applicant/Respondent: Mr. Herman Boeddinghaus KC with him Mr. Andrew O’Kola

Respondent/Appellant: Ms. Cheryl Lee Bolton with Ms. Kenhuah Gordon

Issue: Motion for conditional leave to appeal to His Majesty in Council and interim stay – Adjournment

Type of Order: Adjournment

Result/Order: IT IS HEREBY ORDERED THAT:

1. The hearing of the notice of motion dated 17th March 2026 for conditional leave to appeal to His Majesty in Council and an interim stay is adjourned pending receipt of the reasons for decision or the filing of the transcript of the hearing that took place on 27th March 2026.
2. Liberty to the applicant to apply for the restoration of the application to the hearing list for consideration in open court or on paper.
3. The Chief Registrar will re-list the matter for consideration thereafter.

Reason: Before the Court is a notice of motion filed by JSN Development Group Limited, the applicant, on 17th April 2026 for conditional leave to appeal to His Majesty in Council against the order of this Court dated 27th March 2026 refusing the application for a stay of the substantive appeal. The notice of motion is made pursuant to section 122(2)(a) of the Antigua and Barbuda Constitution Order 1981 and the Antigua and Barbuda Appeals to the Privy Council Order 1967. The motion also seeks an interim stay

of the substantive appeal pending determination of the intended appeal to His Majesty in Council. No reasons for the decision were presented, and the Court does not have before it a transcript of the hearing. The Court considered that in the absence of the reasons for decision coupled with the lack of a transcript, this poses substantial difficulty to the Court in evaluating the merits of the application for conditional leave requiring as it does consideration of the reasons underlying the Court's decision dated 27th March 2026. The Court is satisfied that without the reasons or at the very least the transcript, it is unable to determine with confidence the precise basis on which the stay decision was reached, whether the proposed grounds of appeal accurately identify any alleged error of law or principle, whether the issues proposed for appeal truly arise from the Court's refusal of the stay or whether those issues are of such general or public importance as to warrant consideration by His Majesty in Council. The Court considered the oral representations by counsel for the applicant and the respondent that they have no objection to the Court proceeding to consider the notice of motion for conditional leave and the application for interim stay on papers at their convenience as soon as possible. Accordingly, the Court ordered that the hearing of the notice of motion dated 17th April 2026 for conditional leave to appeal to His Majesty in Council and for an interim stay be adjourned pending receipt of the reasons for decision or the filing of the transcript of the hearing that took place on March 27th 2026.

Case name:

Craig Cochrane

v

[1] Chief Immigration Officer

[2] Department of Immigration

[3] The Attorney General
[ANUHLTAP2024/0001]
ANTIGUA AND BARBUDA

Date: Friday, 3rd July 2026

Coram: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose-Albertini, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. David Dorsett and Mr. Harold Lovell

Respondents: Ms. Joy Dublin, Ms. Alicia Aska and Ms. Rose Ann Kim

Issue: Civil appeal - Unfair dismissal - Appeal against order awarding compensation to the appellant for unfair dismissal in the sum of \$109,791.06 - Factual findings of the Industrial Court - Whether there was in fact a dismissal - Whether the Industrial Court erred when it formed the opinion that “the employer intended to dismiss the employee even though the dismissal was not done by the Governor General as required by Section 5 of the Immigration and Passport Act No. 6 of 2014” - Whether the Industrial Court erred when it formed the opinion that the employee accepted that he was dismissed - Whether the Industrial Court erred in determining that the employee was dismissed on March 31st 2020 – Whether the Industrial Court erred in its conclusion that the employee was deemed an “imminent threat to the security and transparency of the Department

of Immigration”- Remedies – Whether the Industrial Court erred in determining the awards for Loss of Job Protection, outstanding vacation and immediate loss of earnings

Type of Order:

N/A

Result/Order:

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

Reason:

N/A