

COURT OF APPEAL SITTING
TERRITORY OF THE VIRGIN ISLANDS
20th – 24th September 2010

Date: Monday 20th September 2010

Coram: Hon. Chief Justice Mr. Hugh A. Rawlins
Hon. Justice of Appeal Ms. Ola Mae Edwards
Hon. Justice of Appeal Mr. Davidson Baptiste

JUDGMENTS

Claudette Francis v Cecilia Martin
[Civil Appeal No. 7 of 2009]

Appearances:

Appellant: Mr. Gerard Farara QC with Ms. Akilah Anderson

Respondent: Mr. Dwayne Jean Baptiste holding papers for Mr. Sydney Bennett

Issues:

Civil Appeal – Personal injuries – Quantum – Damages – Whether a particular head of damages claimed constitutes special or general damage – Whether particulars need to be given of general damage before more than purely nominal sum recoverable – Whether evidence needs to be led in support of claim for general damage before more than purely nominal sum recoverable – Causation

Result and Reason:

Held, allowing the appeal in part:

1. That other than in relation to future medical expenses the judge's award contained no error either of principle or of assessment;
2. That the judge had based her award for future medical expenses upon the estimated cost (EUR €25,000.00 (US \$32,160.50)) of a remedial surgical procedure which the evidence showed would have only a 50% prospect of success and where there was no suggestion that the

respondent intended to undergo the procedure; that in those circumstances the judge had taken into account an irrelevant factor which had no bearing upon the respondent's claim for future medical costs;

3. That the respondent's claim, accepted by the judge, to be compensated for future medical expenses was a claim for general damages which did not require to be specially pleaded.

Shearman v Folland [1950] 2 KB 43 and British Transport Commission v Gourley [1956] AC 185 applied;

4. That despite the absence of evidence bearing upon the quantum of the respondent's claim for future medical expenses the court had a duty to recognize it by an award that was not out of scale; that the respondent's original submission at trial that an award of US \$20,000.00 in respect of future medical expenses would be a sufficient recognition of her loss was clearly not out of scale, given the respondent's age and the deteriorating state of her health as a result of the accident; and that accordingly the sum of US \$20,000.00 would be substituted for the sum of EUR €25,000.00 in respect of the respondent's claim for future medical expenses.

Greer v Alstons Engineering Sales and Services Ltd [2003] UKPC 46 and Morillo v Forbes British Virgin Islands Civil Appeal No 8 of 2008 applied.

Case Name: Pacific China Holdings Limited v Grand Pacific Holdings Limited
[Civil Appeal No. 7 of 2010]

Appearances:
Appellant: Mr. Richard Evans holding papers for Mr. Mark Forte
Respondent: Mr. Samuel Jack Husbands

Issues: Civil Appeal – Convention award – Application to appoint liquidators based on award – The Arbitration Ordinance Section 36(2) – Convention defences – Whether debt genuinely disputed on substantial grounds – The scope of the court's discretion under section 36(2) of the Arbitration Ordinance

Result and Reason:

Held, allowing the appeal and setting aside the order of the learned trial judge and awarding costs to the appellant, that:

- 1. The court's discretion under section 36(2) of the Ordinance is a narrow one in which a court is justified in overriding a Convention defence where there has been waiver or circumstances giving rise to an estoppel on some such legally recognised principle, or where the error is minor and prejudicially irrelevant;
Dardana Ltd v. Yukos Oil Co. [2002] 1 All ER (Comm) 819, Kanoria v. Guinness [2006] 2 All ER (Comm) 413, Dallah Real Estate and Holding Co.v. Ministry of Religious Affairs of the Government of Pakistan [2009] EWCA Civ 755; approved; dictum of Kaplan J made obiter in Paklito Investment Ltd v Klockner East Asia [1993] HKLR 39, doubted;**
- 2. Where a real question of enforceability of an arbitration award is raised and thus a real or bona fide dispute on substantial grounds on the debt has arisen it is not open to the court to proceed to make a winding up order on the debt grounded on the award;
Dictum of Byron CJ in Sparkasse Bregenz Bank v Associated Capital Corporation British Virgin Islands Civil Appeal No. 10 of 2002, applied.**
- 3. The learned trial judge, having concluded that defences had been raised which on full argument in an application to enforce the award was capable of giving rise to a substantial dispute as to enforceability, erred in exercising a broader discretion than permitted under section 36(2) by undertaking a merits review of the Convention award and importing therein a consideration as to whether, the matters complained of in respect of the defences raised, were material to or would have impacted the outcome.**

APPLICATIONS

Case Name:

**Selena Varlack v The Queen
[Criminal Appeal No. 2 of 2009]**

Appearances:

Appellant: Dr. J.S. Archibald QC with Mr. Dwayne Jean Baptiste

Respondent: Mrs. Grace Henry-McKenzie, Senior Crown Counsel

Issues: Application for leave to withdraw notice of appeal

Result: The notice of appeal having been withdrawn, is accordingly dismissed.

Reason: Matter is before Judge of the High Court to determine quantum of sentence upon conviction of murder, having regard to the Parole Act. Senior Crown Counsel on behalf of the Director of Public Prosecutions has no objection to the course proposed.

Coram: Hon. Chief Justice Mr. Hugh A. Rawlins
Hon. Justice of Appeal Ms. Ola Mae Edwards
Hon. Justice of Appeal Ms. Janice George-Creque

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case Name: Lorne Parsons v The Queen
[Criminal Appeal No. 2 of 2006]

Appearances:

Appellant: Mr. Patrick Thompson holding papers for Sir Richard Cheltenham

Respondent: Mrs. Grace Henry-McKenzie, Senior Crown Counsel

Issues: Murder conviction – Matter was remitted to Court of Appeal by the Judicial Committee of the Privy Council to determine meaning of life imprisonment

Result: Hearing of the appeal in this matter is hereby adjourned to the

next sitting of this court in the Territory in January 2011.

Reason: Appellant applied under the Parole Act before judge of the High Court. Hearing has not taken place as yet. Matter is fixed for October 25th 2010 before the High Court.

Case Name: Clinton Hamm v The Queen
[Criminal Appeal No. 3 of 2006]

Appearances:

Appellant: Mr. Patrick Thompson holding papers for Sir Richard Cheltenham and Mr. Hayden St. Clair-Douglas

Respondent: Mrs. Grace Henry-McKenzie, Senior Crown Counsel

Issues: Murder conviction – Matter was remitted to Court of Appeal by the Judicial Committee of the Privy Council to determine meaning of life imprisonment

Result: Hearing of the appeal in this matter is hereby adjourned to the next sitting of this court in the territory in January 2011.

Reason: Appellant applied under the Parole Act before judge of the High Court. Hearing has not taken place as yet. Matter is fixed for October 25th 2010 before the High Court.

Coram: Hon. Chief Justice Mr. Hugh A. Rawlins
Hon. Justice of Appeal Ms. Ola Mae Edwards
Hon. Justice of Appeal Mr. Davidson Baptiste

Case Name: Denzie Lettsome v The Queen
[Criminal Appeal No. 4 of 2009]

Appearances:

Appellant: Mrs. Marie-Lou Creque

Respondent: Mrs. Grace Henry-McKenzie Senior Crown Counsel

Issues: Appeal against conviction – Possession of ammunition with intent to endanger life

Result: Hearing of the appeal is adjourned to the next sitting of the court in the Territory in 2011.

Reason: Appellant sought adjournment to next sitting – record of appeal not obtained as yet. Senior Crown Counsel on behalf of Director of Public Prosecutions has no objection.

HIGH COURT CIVIL APPEALS

Case Name: Quorum Islands (BVI) Limited v Virgin Islands Environmental Council et al
[Civil Appeal No. 21 of 2009]

Appearances:

Appellant: Mr. Gerard Farara QC

Respondent: Mr. Stephen Hockman and Mr. Mark Beard for VIEC and Ms. Karen Wee for the Attorney General

Issue: Administrative Law – Judicial Review – Delay – Whether Attorney General is a proper party

Result: Hearing of the appeal is adjourned to the next sitting of this court in the Territory in 2011 in order to facilitate settlement.

Reason: Matter is adjourned to facilitate settlement and resolution of the matter.

APPLICATIONS

Case Name: **Bernice Green v Marguerite Hodge
[Civil Appeal No. 14 of 2009]**

Appearances:
Appellant: **Ms. Sheryl Rosan**
Respondent: **Ms. Akilah Anderson**

Issues: **Application to be removed from the record – Application to withdraw the application to be removed from the record – Application for adjournment to next sitting in order to take proper instructions**

Results:

- 1. Application by Solicitors for appellant to be removed from the record is withdrawn and is accordingly dismissed.**
- 2. Hearing of appeal is adjourned to the next sitting of the Court in the Territory in 2011.**
- 3. Solicitors for appellant shall file and serve written submissions by Friday 29th October 2010.**
- 4. Solicitors for the respondent shall file and serve written submissions in response on or before 27th November 2010.**

Reasons: **Solicitors of the appellant informed the court that they would now be able to receive instructions from the appellant. This would facilitate their appearance on behalf of the appellant.**

Case Name: **Reserve International Liquidity Fund Limited v
Western Union International Limited
[Civil Appeal No. 5 of 2010]**

Appearances:
Appellant: **Mr. Ben Mays**
Respondent: **Mr. Jerry Samuels holding papers for Mr. Mark Forte**

Issue: **Commercial application for security for costs – Whether**

respondent was a creditor within the meaning of the Insolvency Act

Results: The application herein is adjourned to the next sitting of the court in the Territory in 2011.

Reason: To facilitate settlement.

MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION

Case Name: Ted Rogers v The Commissioner of Police
[Magisterial Criminal Appeal No. 1 of 2010]

Appearances:

Appellant: Ms. Sheryl Rosan

Respondent: Ms. Christilyn Benjamin, Crown Counsel, with Ms. Jude Hanley

Issue: Appeal against conviction – Assault occasioning actual bodily harm – Whether magistrate erred in refusing to allow the appellant’s application to withdraw his plea of guilty and enter a plea of not guilty.

Results:

1. Hearing of the appeal is adjourned to the next sitting of the court in the Territory in 2011.
2. Solicitors for the appellant to file and serve written submissions by 15th October 2010.
3. Solicitors for the respondent to file and serve written submissions by 5th November 2010.

Reason:

HIGH COURT CIVIL APPEALS

Case Name: Ennio Zanotti v Interlog Finance Corporation et al
[Criminal Appeal No. 8 of 2010]

Appearances:

Appellant: Mr. Robert Foote

Respondent: Mrs. Hazelann Hannaway-Boreland for 1st respondent (2nd and 3rd respondents are not parties to the appeal)

Issue: Commercial Claim – Arbitration Ordinance - Application for adjournment

Result: Appeal hearing is stayed. Stay will be lifted upon the respondent giving not less than 7 days notice to the Court of Appeal. No order for costs in respect of this application.

Reason: Parties are in the process of negotiating towards a settlement. Consent Order was lodged with the court, to be filed.

APPLICATIONS

Case Name: Nam Tai Electronics Inc. v David Hague et al; Bank of China (Hong Kong) Limited v Glenn Harrigan, the Official Liquidator of the above-named company et al; David Hague et al v Nam Tai Electronics Inc.
[Civil Appeal No. 26 of 2010]

Appearances:

Appellant: Ms. Claire Goldstein

Respondent: Mr. Patrick Thompson holding papers for Terrance Neale

Issues: Commercial – Determination under rule 65.13 of the CPR if

costs should be paid by the claimant – Application for directions – Application for adjournment

Result: Hearing of these applications is adjourned to the next sitting of the court in the Territory in 2011.

Reason: Adjournment sought as counsel is unavailable as he is away on sabbatical. Respondent has no objection.

HIGH COURT CIVIL APPEALS

Case Name: The Attorney General of the Virgin Islands et al v Rudolph Maduro
[Civil Appeal No. 16 of 2009]

Appearances:

Appellant: Mr. Baba Aziz, Attorney General (Ag.) with Ms. Karen Reid, Senior Crown Counsel

Respondent: Mr. Stephen Daniels

Issues: Whether section 308 of the Criminal Code is unconstitutional

Result:

- 1. The hearing of this appeal is traversed to the next sitting of the court in this Territory in 2011.**
- 2. Appellant to pay \$1,000.00 costs to the respondent.**

Reason: The appellant filed amended skeleton arguments on 17th September 2010 which were not served on the respondent; and Mr. Aziz applied for an adjournment to facilitate this appeal along with another appeal relating to the same issue being consolidated.

Case Name: Betty Lou Bailey nee Chalwell v Mark Bailey
[Civil Appeal No. 3 of 2009]

Appearances:

Appellant: Ms. Tana'ania Small-Davis

Respondent: Mr. Patrick Thompson holding papers for Mr. John Carrington

Issues: Matrimonial – Ancillary relief – Sale of matrimonial home

Result: By consent, hearing of this appeal is adjourned to Thursday 23rd September 2011.

Reason: Mr. Carrington is appearing before the court in Antigua in relation to the Judge's pension in the ECSC.

CASE MANAGEMENT

Case Name: Alvarez Tutein v Commissioner of Police
[Magisterial Criminal Appeal No. 5 of 2010]

Appearances:

Appellant: Mr. Patrick Thompson

Respondent: Ms. Christilyn Benjamin, Crown Counsel

Issue: Appeal against sentence – Unlicensed firearm

Result:

1. This appeal will be heard on Thursday 23rd September 2010.
2. The Magistrate, who tried the case, or her clerk, shall provide to the Court and Solicitors for the parties the transcript of the proceedings which may be a photocopy of the notes taken at the trial, on or before Tuesday 21st September 2010.

Reason: The appellant was sentenced to 15 months imprisonment. He

appealed almost a year ago. The court was informed, that notwithstanding a number of reminders, the magistrate had so far, failed to produce the notes of evidence and reasons for decision.

HIGH COURT CIVIL APPEALS

Case Name: Westford Special Situations Fund Ltd. v Barfield
Nominees Limited et al
[Civil Appeal No. 14 of 2010]

Appearances:
Appellant: Mr. Stephen Moverly-Smith QC with Ms. Claire Roby
Respondent Mr. Samuel Jack Husbands

Issue: Commercial Claim – Appointment of liquidators – Whether the trial judge had erred in holding that the appellant had not discharged debts due to the respondents that had been the subject of a statutory demand.

Result: Matter is adjourned to Wednesday 22nd September 2010.

Reason: For hearing.

APPLICATIONS

Case Name: Dmitry Kostygin v John Oliver et al
[Civil Appeal No. 31 of 2010]

Appearances:
Appellant: Mr. William Hare

Respondent: No appearance.

Issues: Ex parte application for injunctive relief.

Result: The application for directions and the appeal are withdrawn.

Reason: Applicant not proceeding with the matter for reasons outlined in letter to the court.

MAGISTERIAL CRIMINAL APPEALS AGAINST SENTENCE

Case Name: Mario Matthew v Commissioner of Police
[Magisterial Criminal Appeal No. 3 of 2010]

Appearances:
Applicant: Ms. Christilyn Benjamin, Crown Counsel, with Mr. Valston Graham, Crown Counsel.

Respondent: Mr. Matthew in person.

Issues: Appeal against sentence – Possession of unlicensed firearm and ammunition.

Result: Hearing of this appeal is adjourned to the next sitting of the court in the Territory in January 2011.

Reason: Mr. Matthew has applied for legal aid and sought an adjournment.

MAGISTERIAL CIVIL APPEALS

Case Name: Arthur Corion v. Martin Alphonso
[Magisterial Civil Appeal No. 1 of 2010]

Appearances:
Appellant: Ms. Sheryl Rosan
Respondent: Mrs. Tana'ania Small-Davis

Issues: Repudiation of contract – Oral agreement – Counterclaim for part performance of contract

Result:
1. Solicitors for the Respondent shall file and serve written submissions in response on or before Tuesday 21st September 2010.
2. The appeal herein shall be heard during the course of this week.

Reason: To give the respondents time to file submissions in order to permit the appeal to be heard during the course of the week.

APPLICATIONS

Case Name: Kevin Whitten v Financial Services Commissioner
[Civil Appeal No. 6 of 2009]

Appearances:
Appellant: Ms. Tana'ania Small-Davis
Respondent: Ms. Lynette Ramoutar

Issue: Assessment of costs

Result: Order made in terms of draft order submitted, that is, appellant

shall pay US \$30,000.00 as follows:

1. For the appeal dismissed on 15th March 2010, US\$25,000.00.
2. For the application for leave to appeal to the Privy Council which was dismissed on 17th May 2010, the sum of US \$5,000.00.

Reason: The respondents accepted a prior offer to settle from the appellant.

HIGH COURT CRIMINAL APPEALS AGAINST CONVICTION

Case Name: Deshawn Marcus Stoutt v The Queen
[Criminal Appeal No. 3 of 2009]

Appearances:

Appellant: Dr. J. S. Archibald QC with Mr. Dwayne Jean Baptiste

Respondent: Mr. Terrence Williams with Ms. Jude Hanley

Issues: Murder – Appeal against conviction – Whether trial was unfair having regard to the evidence.

Result: Decision reserved to a date to be notified to the parties.

Date: Tuesday 21st September 2010

Coram: Hon. Justice of Appeal Ms. Ola Mae Edwards
Hon. Justice of Appeal Ms. Janice George-Creque
Hon. Justice of Appeal Mr. Michael Gordon (Ag)

APPLICATIONS

- Case Name:** Yukos Cis Investment Limited et al v Yukos Hydrocarbons Investments Limited et al
[Civil Appeal No. 28 of 2010]
- Appearances:**
- Appellant:** Mr. Charles Hollander Q.C. with Ian Mann
- Respondent:** Mr. Richard Evans and Ms. Monique Peters
- Issues:** Commercial Claim – Application for leave to appeal by claimant – Rectification of share register.
- Result:** Decision reserved concerning the application for leave. The court will give its ruling on Thursday 23rd September 2010 and will also give directions on the hearing of the appeal.
- Reason:**
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- Case Name:** Angel Wise Limited v Stark Moly Limited
[Civil Appeal No. 30 of 2010]
- Appearances:**
- Appellant:** Mr. Paul Dennis with Ms. Glenis Potts
- Respondent:** Mr. Oliver Clifton
- Issues:** Commercial Claim – Application by appellants for a stay of further execution of an order where an application to set aside a statutory demand was refused by the court below.
- Result:** Application is granted in terms of the draft order as amended. The amendment relates to the date of hearing, where the 13th is substituted for the 21st.

Reason: The Court is satisfied that pursuant to section 18 of the Court Act and rules 62.19 & 62.20 of the CPR 2000, the court has the jurisdiction to stay the proceedings in the original proceedings as requested by the appellant, having regard to the affidavit in support. The criteria for granting a stay have been met.

HIGH COURT CIVIL APPEALS

Case Name: In the Matter of Section 24 of the Mental Health Act Cap. 1919 of the Laws of the Virgin Islands and In the Matter of Sharmaine Fahie and In the Matter of the appointment of a Receiver to Administer the affairs of Sharmaine Fahie
[Civil Appeal No. 4 of 2010]

Appearances:
Appellant: Ms. Sheryl Rosan
Respondent: Ms. Tamara Cameron

Issues: Appeal against wasted costs order – Whether attorney was properly notified of sitting of the court – Whether order reasonable in the circumstances.

Result: Matter adjourned to 22nd September 2010.

Reason: Record from the High Court to be presented to the court.

Case Name: Santa Fraser as Executor of the Estate of Beatrice Benjamin Rhymer (deceased) v Patsy Angeline Francis
[Civil Appeal No. 13 of 2009]

Appearances:

Appellant: Ms. Sheryl Rosan

Respondent: Mr. Herbert McKenzie

Issues: Transfer of Land – Fraud

Result: Appeal is dismissed. Judgment in the court below is affirmed. Costs in the appeal to the respondent being two-thirds of the sum of \$20,000.00 awarded in the court below.

Case Name: John & Edna McCleverty v Cynthia Rose Keeton
[Civil Appeal No. 3 of 2010]

Appearances:

Appellant: Ms. Sheryl Rosan

Respondent: Mr. Patrick Thompson

Issues: Wasted costs order – Whether reasonable in the circumstances where the application to strike out the fixed date claim of the appellant’s client was filed and served on the appellant and determined on the same day without the appellant being afforded the opportunity to respond to the application in writing.

Result: Matter adjourned to the 22nd September 2010.

Reason: Record from the High Court to be presented in court.

Date: Wednesday 22nd September 2010

Coram: Hon. Justice of Appeal Ms. Ola Mae Edwards (President)
Hon. Justice of Appeal Ms. Janice George-Creque

Hon. Justice of Appeal Mr. Michael Gordon (Ag)

HIGH COURT CIVIL APPEALS

Case Name: In the Matter of Section 24 of the Mental Health Act Cap. 1919 of the Laws of the Virgin Islands and In the Matter of Sharmaine Fahie and In the Matter of the appointment of a Receiver to Administer the affairs of Sharmaine Fahie
[Civil Appeal No. 4 of 2010]

Appearances:
Appellant: Sheryl Rosan
Respondent: Mrs. Tamara Cameron

Issues: Whether or not in all the circumstances the learned trial judge exercised her discretion correctly in relation to the wasted costs order.

Result: Appeal allowed and order varied to the extent that the costs awarded by the learned judge were not to be borne by the appellant but by the client.

Reason: The appellant did not act irresponsibly under the circumstances.

Case Name: John & Edna McCleverty v Cynthia Rose Keeton
[Civil Appeal No. 3 of 2010]

Appearances:
Appellant: Ms. Sheryl Rosan
Respondent: Mr. Patrick Thompson

Issues: Wasted costs order – Whether reasonable in the circumstances

where the application to strike out the fixed date claim form of the appellant's clients was filed and served on the appellant and determined on the same day without the appellant being afforded the opportunity to respond to the application in writing.

Result: Appeal is allowed to the extent that the order is varied regarding the \$1000.00 wasted costs, and varied to read that the costs should be paid by the claimants.

Reason: The application to strike out the statement of claim was filed, served and heard on the same day; therefore the appellant did not have an opportunity to respond properly. It cannot be said that the appellant was acting unreasonably or improperly in the circumstances, particularly where the appellant did not have an opportunity to explain why she acted in the manner she did.

Coram: Hon. Justice of Appeal Ms. Ola Mae Edwards (President)
Hon. Justice of Appeal Mr. Davidson Baptiste
Hon. Justice of Appeal Mr. Michael Gordon (Ag)

HIGH COURT CIVIL APPEALS

Case Name: National Parks Trust v Nervin Wheatley
[Civil Appeal No. 8 of 2009]

Appearances:
Appellant: Mrs. Tana'ania Small-Davis
Respondent: Mr. Marlon Gordon with Ms. Marie-Lou Creque

Issues: Award for loss of income – Rent – Compensation for improvement to property – Reimbursement for loan – Whether conduct of appellant ought not to have been taken into consideration in award of the sum.

Result: 1. Appeal is allowed, to the extent that the sum to be paid is

reduced to \$9,000.00 with interest at the statutory rate from the date of the judgment.

2. The appellant, being 80% successful in the appeal, is entitled to costs being two-thirds of the prescribed costs on \$36,000.00 reduced by 20%.

Reason: Conduct of appellant ought not to have been taken into consideration.

Coram: Hon. Justice of Appeal Ms. Janice George-Creque
Hon. Justice of Appeal Mr. Davidson Baptiste
Hon. Justice of Appeal Mr. Michael Gordon (Ag.)

Case Name: Westford Special Situations Fund Limited v Barfield
Nominees Limited et al
[Civil Appeal No. 14 of 2010]

Appearances:
Appellant: Mr. Stephen Moverly-Smith QC with Ms. Claire Robey
Respondent: Mr. Samuel Jack Husbands

Issues: Commercial – Appointment of liquidators – Application for security for costs.

Result:
1. Application for security for costs is dismissed. No order as to costs.
2. Appeal is allowed. The order of the trial judge appointing liquidators over the appellants dated 18th March 2010 is set aside. The parties to file and exchange written submissions on costs no later than 8th October 2010.

Reason:
1. Respondent waited until it was inordinately late to make application for security for costs. The application would serve to delay the appeal.
2. Written submissions to be filed on costs.
3. Reasons will be contained in written judgment to follow.

Case Name: John Casson v Maples and Calder (A Firm)
[Civil Appeal No. 25 of 2010]

Appearances:
Appellant: Mr. Terrence Neale
Respondent: Mr. Ben Mays

Issues: Disclosure – “Unless” order – Whether the appellant was in default of the disclosure order.

Result: Appeal is allowed to the extent that the order in this matter dated 22nd July 2010 be varied in the following respects:
1) Paragraph 1 of the final seven (7) words be excised and the following be substituted: “be prohibited from using any documentary evidence not so produced”.
2) Paragraphs 2 to 5 of the order are excised.
3) Costs in this appeal are awarded to the appellants in the sum of \$1,600.00.

Reason:

Date: 23rd September 2010

Coram: Hon. Justice of Appeal Ms. Ola Mae Edwards (President)
Hon. Justice of Appeal Ms. Janice George Creque
Hon. Justice of Appeal Mr. Michael Gordon (Ag.)

APPLICATIONS

Case Name: Yukos Cis Investment Limited et al v Yukos
Hydrocarbons Investments Limited et al
[Civil Appeal No. 28 of 2010]

Appearances:

Appellant: Mr. Ian Mann holding papers for Mr. Charles Hollander QC

Respondent: Mr. Richard Evans with Ms. Monique Peters

Issues:

Application for leave to appeal – Rectification of share register pursuant to section 43 of the Business Companies Act

Result:

Application for leave is granted. Appellant to file notice of appeal within 7 days of this date. Appellant may file skeleton arguments in relation to both appeals by Friday 29th October 2010. The respondent may file skeleton arguments where necessary by 26th November 2010. The appellant shall file and serve a supplemental record containing all documents. The appeal is scheduled to last one day. Appeal is fixed for hearing in Antigua during the week commencing 13th December 2010.

Reason:

Coram:

Hon. Justice of Appeal Ms. Ola Mae Edwards (President)
Hon. Justice of Appeal Mr. Davidson Baptiste
Hon. Justice of Appeal Mr. Michael Gordon (Ag.)

HIGH COURT CIVIL APPEALS

Case Name:

**Betty Lou Bailey nee Chalwell v Mark Bailey
[Civil Appeal No. 3 of 2009]**

Appearances:

Appellant: Mrs. Tana'ania Small-Davis and Tamara Cameron

Respondent: Mr. John Carrington

Issues:

Matrimonial Ancillary Relief – Sale of matrimonial home.

Result:

Judgment reserved.

Reason:

Case Name: Chiverton Construction Limited v Scrub Island
Development Group Limited
[Civil Appeal No. 28 of 2009]

Appearances:
Appellant: Mr. Garvin Simmonette with Ms. Helene Anne Lewis
Respondent: Willa Tavernier with Ms. Glenis Potts

Issues: Construction Contract and Building Project – Legal meaning of
term “abandonment” where it is alleged that the appellant
abandoned the contract – Repudiation of contract.

Result: Judgment reserved to be delivered on a date to be notified.

Reason:

Coram: Hon. Chief Justice of Appeal Mr. Hugh Rawlins
Hon. Justice of Appeal Ms. Janice George Creque
Hon. Justice of Appeal Mr. Davidson Baptiste

CASE MANAGEMENT

Case Name: Alvarez Tutein v Commissioner of Police
[Magisterial Criminal Appeal No. 5 of 2010]

Appearances:
Appellant: Mr. Patrick Thompson
Respondent: Mr. Valston Graham, Crown Counsel.

Issues: Appeal against sentence – Possession of a firearm – Whether sentence was excessive where appellant is the holder of a firearms licence in another country.

Result: The appeal is allowed to the extent that the sentence is varied from 15 months to 10 months imprisonment.

Reason: The fact of the appellant’s maturity, that he has been the holder of a firearms license for 9 years in another country, that he has no previous convictions, that he pleaded guilty and the explanation contained in his affidavit, were taken into consideration by the Court of Appeal.

MAGISTERIAL CIVIL APPEALS

Case Name: Island Equipment Rental DBA Tool Town v Ricky Connor DBA Ricky’s 24 hour Trucking and Heavy Equipment Services
[Magisterial Civil Appeal No. 3 of 2009]

Appearances:

Appellant: No appearance

Respondent: Mrs. Tana’ania Small-Davis holding papers for Ms. Akilah Anderson who was absent due to medical illness.

Issues:

Result: Hearing of this appeal is adjourned to the next sitting of the Court in 2011, unless earlier scheduled; at the convenience of the parties and the court.

Reason: Counsel for the appellant is ill.

Case Name: Arthur Corion v Martin Alphonso
[Magisterial Civil Appeal No. 1 of 2010]

Appearances:
Appellant: Ms. Sheryl Rosan
Respondent: Mrs. Tana'ania Small-Davis

Issues: Repudiation of contract – Oral agreement – Counterclaim for part performance of the contract.

Result: The Appeal is dismissed and the order of the magistrate is affirmed. The appellant shall pay \$700.00 in agreed costs to the respondent.

Reason: Court sees no reason to disturb findings by the magistrate.