

**COURT OF APPEAL SITTING**  
**SAINT VINCENT AND THE GRENADINES**  
**29<sup>th</sup> May to 1<sup>st</sup> June 2012**

**JUDGMENT**

**Case Name:** [1] Emirates International Investment Company  
v  
[1] Slim Malouche  
[2] Registrar of Companies

**[High Court Civil Appeal No. 32 of 2011]  
(Territory of the Virgin Islands)**

**Date:** Tuesday, 29<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Samuel E. Commissiong holding papers for Mr. Francis Tregear, QC

**Respondent:** Ms. Rene Baptiste holding papers for Mr. Stephen Moverley Smith, QC

**Issues:** Civil appeal – Liquidator – Virgin Islands Insolvency Act, 2003 – Virgin Islands Business Companies Act, 2004 – Insolvency Rules, 2005 – Whether an appellate court ought to interfere with the exercise of a trial judge’s discretion – Whether a liquidator is entitled to adjudicate a claim where fraud is alleged without engaging in any formal adjudication process

**Result & Reason:** Held: dismissing the appeal with costs to the respondents fixed at two-thirds of the amount

**agreed or assessed to be paid by the appellant to the respondents in the court below, that:**

- 1. An appeal against a judge in the exercise of his judicial discretion, will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the learned judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (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 trial judge, on the evidence presented before him, exercised his judicial discretion and arrived at a particular conclusion. The evidence before another judge may lead that judge to a different conclusion; notwithstanding this, it cannot be said that the trial judge failed to take into account or gave too little or too much weight to relevant factors or considerations and as a consequence he was clearly or blatantly wrong in arriving at the conclusion that he did and in making the decision arising from it.**

**Dufour et al v Helenair Corporation Limited et al (1996) 52 WIR 188 applied.**

- 2. A liquidator is clothed with significant powers and is entitled to accept or reject claims properly made to him. In the present case, the claim made by EIC which was accepted by the liquidator was a disputed one and which claim alleged serious fraud on Gallea. Although the liquidator has the power to accept a claim, an action in which the character or**

**professional ability of a person is attacked and where allegations of fraud are made should not be determined by an official, even one having wide adjudicative powers, but should be determined by a judge of the court.**

**Charles Osenton and Company v Johnston [1941] 2 All ER 245 applied; Section 209 of the Business Companies Act 2004 applied.**

- 3. A person aggrieved by any act, omission or decision of an office holder may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the office holder. This does not give express standing to a shareholder/contributor of a company in liquidation to challenge a decision made by a liquidator, but merely creates an opening through which any aggrieved person may seek redress in the courts from acts, omissions or decisions of administrators, liquidators or receivers of companies in liquidation. The acceptance of the claim by the liquidator meant that Gallea was indeed indebted to EIC; which claim Gallea would be unable to defend. The disputed claim needed to be adjudicated judicially and not determined administratively. Accordingly, the trial judge was correct to discharge the liquidation as it would be fair and just to determine the contentious issues in a court.**

**Section 273 of the Insolvency Act, 2003 applied.**

- 4. The Registrar of Corporate Affairs, for the purposes of this case, is the custodian of the public interest and the gatekeeper of the commercial morality of the country. No objection to the termination of the liquidation was proffered by the**

Registrar. Moreover, a court, in determining whether to order a stay of the winding up of a company, is duty bound to consider not only what is proposed for the benefit of the creditors but also whether it is conducive or detrimental to commercial morality and to the interests of the public at large.

In Re Telescriptor Syndicate, Limited  
[1903] 2 Ch 174 cited.

## **APPLICATIONS AND APPEALS**

**Case Name:**

**[1] Daniel Cummings**

**[2] BDS Limited**

**v**

**[1] The Hon. Dr. Ralph E. Gonsalves**

**[High Court Civil Appeal No. 18 of 2011]**

**Date:**

**Tuesday, 29<sup>th</sup> May 2012**

**Coram:**

**The Hon. Mde. Janice M. Pereira, Justice of Appeal**

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:**

**Mr. Emery Robertson**

**Respondent:**

**Mr. Stephen Williams holding for Mr. Graham Bollers**

**Issues:**

**Application for leave to appeal – Application for adjournment**

**Result / Order:** [Oral delivery]  
The matter is adjourned by consent to the next sitting of the Court of Appeal in St. Vincent and the Grenadines.

**Reason:** The application for adjournment was sought to facilitate the production of a draft consent order.

**Case Name:** [1] The Commissioner of Police  
[2] The Honourable Attorney General  
v  
[1] The sum of US \$67,540.00  
[2] Tex Frederick  
[3] Barrington Harris

[High Court Civil Appeal No. 4 of 2012]

**Date:** Tuesday, 29<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** Mr. Grant Connell  
**Respondent:** Ms. Lateshia Sandy with her Ms. Kozel Creese

**Issue:** Application to strike out notice of appeal

**Result / Order:** [Oral delivery]  
The matter is adjourned until 2:30 p.m.

**Case Name:** Ikeo Gaymes v The Commissioner of Police  
[Magisterial Criminal Appeal No. 22 of 2012]

**Date:** Tuesday, 29<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Ms. Samantha Robertson

**Respondent:** Mr. Colin Williams, Director of Public Prosecutions

**Issue:** Application for extension of time to appeal

**Result / Order:** [Oral delivery]  
1. Application for extension of time to appeal is granted.  
2. Time is extended to Friday, 8<sup>th</sup> July 2012 to file notice of appeal.

**Reason:** There was no objection to the application by the respondent. Even though the notice for extension of time to appeal was filed out of time by a few days, the Court decided to grant the application.

**Case Name:**

**[1] The Commissioner of Police  
[2] The Honourable Attorney General**

**v**

**[1] The sum of US \$67,540.00  
[2] Tex Frederick  
[3] Barrington Harris**

**[High Court Civil Appeal No. 4 of 2012]**

**Date:**

**Tuesday, 29<sup>th</sup> May 2012**

**Coram:**

**The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:**

**Mr. Grant Connell**

**Respondent:**

**Ms. Lateshia Sandy with her Ms. Kozel Creese**

**Issue:**

**Application to strike out notice of appeal**

**Result / Order:**

**[Oral delivery]**

- 1. The application to strike out notice of appeal is granted.**
- 2. The notice of appeal filed herein on 25<sup>th</sup> April 2012 is hereby struck out.**
- 3. The second respondent is awarded costs in the sum of \$500.00.**

**Reason:**

**Section 50(3) of the Proceeds of Crime and Money Laundering (Prevention) Act Chapter 181 of the Revised Laws of St. Vincent and the Grenadines 2009 do not confer a right of appeal to the applicant in the circumstances. The appeal contemplated was an appeal to the High Court and not to the Court of Appeal. Section 50 contemplated a situation where a forfeiture order was in fact made. No right of appeal is**

given where there is no order of forfeiture. Furthermore, where a forfeiture order was made the right of appeal lies to the High Court.

**Case Name:** Jasper Charles v The Queen  
[High Court Criminal Appeal No. 11 of 2011]

**Date:** Tuesday, 29<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Ms. Sejilla McDowall and Ms. Ayanna Dabreo

**Issues:** Criminal appeal against sentence – Wounding with intent

**Result / Order:** [Oral delivery]  
The appeal against sentence is dismissed and the sentence is affirmed.

**Reason:** The appellant was on remand from 16<sup>th</sup> March 2010 to 6<sup>th</sup> February 2011. In sentencing him, the Court should have taken this into consideration. However the injuries sustained by the virtual complainant were very serious. In the circumstances, the Court found no reason to interfere with the sentence.



**Case Name:** **Stevenson Moses v The Queen**  
**[High Court Criminal Appeal No. 12 of 2011]**

**Date:** **Tuesday, 29<sup>th</sup> May 2012**

**Coram:** **The Hon. Sir Hugh A. Rawlins, Chief Justice**  
**The Hon. Mr. Don Mitchell, Justice of Appeal**  
**[Ag.]**  
**The Hon. Mr. Tyrone Chong, Justice of Appeal**  
**[Ag.]**

**Appearances:**

**Appellant:** **In person**

**Respondent:** **Mr. Colin John with him Ms. Sejilla McDowall**  
**and Ms. Ayanna Dabreo**

**Issues:** **Criminal appeal against sentence – Attempted**  
**rape – Arson**

**Result / Order:** **[Oral Delivery]**  
**The appeal against sentence is dismissed and**  
**the sentence is affirmed.**

**Reason:** **Given the seriousness of the offence, the Court**  
**could not find any reason to interfere with the**  
**sentence.**

**Case Name:** **Udorick Watson v The Queen**  
**[High Court Criminal Appeal No. 10 of 2011]**

**Date:** **Tuesday, 29<sup>th</sup> May 2012**

**Coram:** **The Hon. Sir Hugh A. Rawlins, Chief Justice**

The Hon. Mr. Don Mitchell, Justice of Appeal  
[Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal  
[Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Ms. Sejilla McDowall  
and Ms. Ayanna Dabreo

**Issues:** Criminal appeal against conviction and  
sentence – Forgery – Making and using false  
instrument

**Result / Order:** [Oral delivery]  
The hearing of the appeal is adjourned to  
Friday, 1<sup>st</sup> June 2012.

**Case Name:** Godwin Sam v The Queen  
[High Court Criminal Appeal No. 5 of  
2012]

**Date:** Tuesday, 29<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Don Mitchell, Justice of Appeal  
[Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal  
[Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Ms. Sejilla McDowall  
and Ms. Ayanna Dabreo

**Issues:** Criminal appeal against sentence – Burglary

**Result / Order:** [Oral delivery]  
The hearing of the appeal is adjourned to Friday, 1<sup>st</sup> June 2012.

**Case Name:** Talford Roberts v Anesta Cuss  
Humphrey  
[High Court Civil Appeal No. 4 of 2010]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Andreas Coombs

**Respondent:** Mrs. Kay Bacchus-Browne

**Issue:** Whether or not a trial judge can enter summary judgment or judgment in default on a fixed date claim form

**Result / Order:** [Oral Delivery]  
1. The appeal is allowed and the order set aside.  
2. The time for filing a defence to the statement of claim is 14 days from today's date provided that the costs ordered in paragraph 4 of the order of this Court made on 29<sup>th</sup> March 2012 is paid no later than Friday, 8<sup>th</sup> June 2012.  
3. There shall be no costs in the appeal.

**Reason:** The learned trial judge erred in giving summary

judgment on a fixed date claim. This is not permissible under rule 15.3(c) of the Civil Procedure Rules 2000.

**Case Name:** Sonya Young v Vynette Frederick  
[High Court Civil Appeal No. 22 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Anthony Astaphan, SC, with him, Mr. Graham Bollers and Mr. Richard Williams

**Respondent:** Mr. Keith Scotland with him Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester

**Issues:** Application for judicial review – Whether leave should be granted to bring judicial review proceedings – Whether leave already granted should be set aside

**Result / Order:** Judgment is reserved.

**Case Name:** Nigel Stephenson v The Director of Public Prosecutions  
[High Court Civil Appeal No. 23 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Keith Scotland with him Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester

**Respondent:** Mr. Anthony Astaphan, SC, with him, Mr. Graham Bollers and Mr. Richard Williams

**Issues:** Application for judicial review – Whether leave should be granted to bring judicial review proceedings – Whether leave already granted should be set aside

**Result / Order:** Judgment is reserved.

**Case Name:** Vynette Frederick v The Director of Public Prosecutions  
[High Court Civil Appeal No. 24 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Keith Scotland with him Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester

**Respondent:** Mr. Anthony Astaphan, SC, with him, Mr. Graham Bollers and Mr. Richard Williams

**Issues:** Application for judicial review – Whether leave should be granted to bring judicial review proceedings – Whether leave already granted should be set aside

**Result / Order:** Judgment is reserved.

**Case Name:** Patricia M. Chance v The Director of Public Prosecutions  
[High Court Civil Appeal No. 25 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Keith Scotland with him Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester

**Respondent:** Mr. Anthony Astaphan, SC, with him, Mr. Graham Bollers and Mr. Richard Williams

**Issues:** Application for judicial review – Whether leave should be granted to bring judicial review proceedings – Whether leave already granted should be set aside

**Result / Order:** Judgment is reserved.

**Case Name:** Linton Lewis v The Director of Public Prosecutions  
[High Court Civil Appeal No. 26 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Keith Scotland with him Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester

**Respondents:** Mr. Anthony Astaphan, SC, with him, Mr. Graham Bollers and Mr. Richard Williams

**Issues:** Application for judicial review – Whether leave should be granted to bring judicial review proceedings – Whether leave already granted should be set aside

**Result / Order:** Judgment is reserved.

**Case Name:** Myrtle L. Williams v Andre D. Cottle  
[High Court Civil Appeal No. 2 of 2010]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Ms. Nicole Sylvester with her Ms. Patina Knights and Ms. LaKeisha John

**Respondents:** No appearance of and for the respondent

**Issues:** Constructive trust – Parties were in a common law relationship

**Result / Order:** Judgment is reserved until later this afternoon.

**Case Name:** Edward Taylor v The Queen  
[High Court Criminal Appeal No. 14 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Mr. Carl Williams and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against conviction and sentence – Attempted murder

**Result / Order:** [Oral delivery]  
The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in St. Vincent and the Grenadines during the week of 17<sup>th</sup> to 21<sup>st</sup> September 2012.



**Reason:** To permit the appellant to instruct counsel to assist him in the preparation of his appeal.

**Case Name:** Udorick Watson v The Queen  
[High Court Criminal Appeal No. 10 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** In person  
**Respondent:** Mr. Colin John with him Mr. Carl Williams and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against conviction and sentence – Forgery – Making and using false instrument

**Result / Order:** [Oral delivery]  
The hearing of the appeal is adjourned to Thursday, 31<sup>st</sup> May 2012.

**Case Name:** Godwin Sam v The Queen  
[High Court Criminal Appeal No. 5 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** In person  
**Respondent:** Mr. Colin John with him Mr. Carl Williams and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against conviction – Burglary

**Result / Order:** [Oral delivery]  
The hearing of the appeal is adjourned to Thursday, 31<sup>st</sup> May 2012.

**Case Name:** Kevin Westfield v The Commissioner of Police  
[Magisterial Criminal Appeal No. 48 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** Ms. Samantha Robertson  
**Respondent:** Mr. Colin John with him Mr. Carl Williams and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Possession of an offensive weapon

**Result / Order:** [Oral delivery]  
The hearing of the appeal is adjourned to Thursday, 31<sup>st</sup> May 2012.

**Reason:** The Court was minded to grant an adjournment as the report from the Mental Health Facility was not yet received by the Court.

**Case Name:** Enroy Lavia v The Commissioner of Police  
[Magisterial Criminal Appeal No. 40 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

<b>Appellant:</b>	In person
<b>Respondent:</b>	Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Indecent assault

**Result / Order:** The matter is stood down.

**Case Name:** Romando Andrews v The Commissioner of Police  
[Magisterial Criminal Appeal No. 60 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** No appearance

**Respondent:** Mr. Colin John with him Mr. Carl Williams and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence - Burglary

**Result / Order:** The matter is stood down.

**Reason:** The appellant requested that the time spent on remand (1 month and 1 day) be taken into account in the 1 year sentence imposed. The matter was stood down to determine whether the appellant was on remand for the particular offence charged.

**Case Name:** Hollis Young v The Commissioner of Police  
[Magisterial Criminal Appeal No. 55 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In Person

**Respondent:** Mr. Colin John with him Mr. Carl Williams and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence - Theft

**Result / Order:** The matter is stood down.

**Case Name:** Lamont Lescott v The Commissioner of Police  
[Magisterial Criminal Appeal No. 7 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Mr. Carl Williams and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence - Stealing

**Result / Order / Reason:** [Oral Delivery]  
1. The appeal against sentence is withdrawn

- and accordingly dismissed.
2. The sentence of three (3) years imprisonment is affirmed.

**Case Name:** Zeno Lee v The Commissioner of Police  
[Magisterial Criminal Appeal No. 21 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:** **Appellant:** In Person  
**Respondent:** Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Possession of a controlled drug

**Result / Order / Reason:** [Oral Delivery]  
1. The appeal is withdrawn and accordingly dismissed.  
2. The sentence of 1 ½ years imprisonment is affirmed.

**Case name:** Kenneth Small v The Commissioner of Police  
[Magisterial Criminal Appeal No. 20 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Unlawful and malicious wounding

**Result / Order:** The matter is stood down.

**Case name:** Enroy Lavia v The Commissioner of Police  
[Magisterial Criminal Appeal No. 40 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Indecent assault

**Result / Order:** [Oral delivery]  
1. The appeal is hereby dismissed and the sentence is affirmed.  
2. The sentence shall run from 10<sup>th</sup> December 2010.

**Reason:** The Court could find no reason to interfere with the sentence.

**Case name:** Kenneth Small v The Commissioner of Police  
[Magisterial Criminal Appeal No. 20 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** Mr. Stephen Williams  
**Respondent:** Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Unlawful and malicious wounding

**Result / Order:** [Oral delivery]  
1. The appeal is hereby dismissed and the sentence of 18 months imprisonment affirmed.



**Reason:** The Court was of the view that the attack was serious and unwarranted.

**Case name:** Romando Andrews v The Commissioner of Police  
[Magisterial Criminal Appeal No. 60 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

<b>Appellant:</b>	In person
<b>Respondent:</b>	Mr. Colin John with him Mr. Carl Williams, and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Burglary

**Result / Order:** [Oral delivery]  
The appeal is hereby dismissed and the sentence of 1 year imprisonment is affirmed.

**Reason:** The appellant requested that the time spent on remand (1 month and 1 day) be taken into account in the 1 year sentence imposed. The Court found however that the nature of the disposition of the matter suggested that he was not on remand for the offence charged.

**Case name:** Hollis Young v The Commissioner of Police  
[Magisterial Criminal Appeal No. 55 of 2011]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** No appearance

**Respondent:** Mr. Colin John with him Mr. Carl Williams, and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Theft

**Result / Order / Reason:** [Oral delivery]  
The appeal is dismissed for want of prosecution with liberty to restore.

**Case name:** [1] Mando Lewis  
[2] Francis Thomas  
v  
[1] The Commissioner of Police

[Magisterial Criminal Appeal No. 19 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of

**Appeal**  
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **First named appellant in person**

**No appearance of and for the second named respondent**

**Respondent:** **Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo**

**Issues:** **Criminal appeal against sentence – Unlawful and malicious wounding**

**Result / Order:** **[Oral delivery]**  
**The appeal is adjourned to Thursday, 31<sup>st</sup> May 2012.**

**Reason:** **The second appellant was absent so the Court was minded to adjourn the matter to secure his attendance.**

**Case name:** **Raymond Ryan v The Commissioner of Police**  
**[Magisterial Criminal Appeal No. 48 of 2010]**

**Date:** **Wednesday, 30<sup>th</sup> May 2012**

**Coram:** **The Hon. Sir Hugh A. Rawlins, Chief Justice**  
**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**  
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** **In person**

**Respondent:** Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against conviction and sentence – Possession of a controlled drug with intent to supply – Possession of ammunition

**Result / Order:** The matter is stood down.

**Reason:** To await the arrival of counsel for the appellant.

**Case name:** Roy Richards v The Commissioner of Police  
[Magisterial Criminal Appeal No. 8 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Jaundy Martin

**Respondent:** Mr. Colin John with him Mr. Carl Williams, Ms. Sejilla McDowall and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against conviction and sentence – Unlawful and malicious wounding

**Result / Order:** [Oral delivery]  
1. The appeal against conviction is allowed and the conviction and sentence set aside.

2. A retrial is ordered before another Magistrate.
3. The appellant remains on bail on the same terms pending the retrial.

**Reason:**

The appellant was unrepresented when he pleaded guilty to the charge. From the record, there was no indication as to any question being put to the appellant as to whether or not he accepted the facts as presented by the prosecution or as to whether he had any explanation.

The appellant was asked to speak in mitigation but the normal thing that should have happened was that once he had pleaded guilty and the facts have been read even before it came to the mitigation stage he should have been asked, "what do you have to say about those facts."

There was nothing on the record to show that the appellant had the opportunity to give his story on the facts as presented by the prosecution. In those circumstances the appeal must be resolved in favour of the appellant especially because he was undefended. It must be present on the record if the appellant was asked, and if it was not on the record, the Court can assume that he was not asked therefore the benefit must be given to the appellant.

**Case name:**

**Myrtle L. Williams v Andre D. Cottle  
[High Court Civil Appeal No. 2 of 2010]**

**Date:**

**Wednesday, 30<sup>th</sup> May 2012**

**Coram:**

**The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** Ms. Nicole Sylvester with her Ms. Patina Knights and Ms. LaKeisha John

**Respondent:** No appearance of and for the respondent

**Issues:**

**Constructive trust – Parties were in a common law relationship**

**Result / Order:**

**[Oral delivery]**

- 1. The appeal is dismissed in relation to the order of trial judge at paragraph 46(a) and (b) of the judgment and accordingly those orders are affirmed.**
- 2. The appeal from the costs order of the trial judge contained in paragraph 46(c) of the said judgment allowed. The costs order is set aside and there is no order as to costs in the High Court.**
- 3. There is no order as to costs in these appeal proceedings.**

**Reason:**

**The Court determined that where the property was placed in both names (as it was in this case) the intention without more was that they were both entitled to the legal and beneficial interest unless the facts were very unusual as to amount to exceptional circumstances so that the presumption could be rebutted.**

**The Court was of the opinion that the factual circumstances of this case rebutted the presumption as the evidence showed that there was no intention by the respondent for the appellant to have an equal share in common or any beneficial interest in the property.**

**Case name:**

**Patrick Dasent v The Commissioner of**

**Police**  
**[Magisterial Criminal Appeal No. 11 of 2012]**

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** In person

**Respondent:** Mr. Colin John with him Mr. Carl Williams

**Issues:** Criminal appeal against sentence – Grievous bodily harm

**Result / Order:** [Oral delivery]  
1. The appeal is allowed and the conviction and sentence set aside.  
2. A retrial is ordered.

**Reason:** There wasn't any sufficient reason given for the decision and the Magistrate has left the jurisdiction. As such, the Court was minded to order a retrial of the matter.

**Case name:** Adrian Richards v The Commissioner of Police  
[Magisterial Criminal Appeal No. 12 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**  
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** Ms. Elizabeth Ryan holding papers for Mr. Duane Daniel  
**Respondent:** Mr. Colin John with him Mr. Carl Williams

**Issues:**

**Criminal appeal against conviction and sentence – Unlawful and malicious wounding**

**Result / Order:**

**[Oral delivery]**  
**1. The hearing of the appeal is adjourned to the week of 17<sup>th</sup> to 21<sup>st</sup> September 2012, this being the final adjournment.**  
**2. The appellant is to remain on bail on the same terms pending the hearing of the appeal.**

**Case name:**

**Raymond Ryan v The Commissioner of Police**  
**[Magisterial Criminal appeal No. 48 of 2010]**

**Date:**

**Wednesday, 30<sup>th</sup> May 2012**

**Coram:**

**The Hon. Sir Hugh A. Rawlins, Chief Justice**  
**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**  
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant:** In person  
**Respondent:** Mr. Colin John with him Mr. Carl Williams



**Issues:** Criminal appeal against conviction and sentence – Possession of a controlled drug with intent to supply – Possession of ammunition

**Result / Order:** [Oral delivery]  
1. The Registrar shall assign counsel to the appellant for the purpose of assisting him to prepare and present his appeal.  
2. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in St. Vincent and the Grenadines during the week of 17<sup>th</sup> to 21<sup>st</sup> September 2012.

**Reason:** To instruct counsel appointed by the court in the preparation of his appeal.

**Case name:** [1] Winston Davis  
v  
[1] Gwendolyn Cottoy  
[2] Shem McNicholls  
[Magisterial Civil Appeal No. 1 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** Ms. Elizabeth Ryan holding papers for Mr. Ronald Marks  
**Respondent:** No appearance of and for the respondent

**Issue:** Claim for damages

**Result / Order / Reason:** [Oral delivery]  
Appeal was discontinued by the appellant and accordingly dismissed.

**Case name:** Venus Pitt v Koleen Thomas  
[Magisterial Civil Appeal No. 2 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearance:**

**Appellant:** No appearance of and for appellant

**Respondent:** Mr. Stephen Williams

**Issue:** Claim for damages

**Result / Order:** [Oral delivery]  
The matter is adjourned until Thursday, 31<sup>st</sup> May 2012.

**Case name:** Edgar Bobb v Nelcia Horne  
[Magisterial Civil Appeal No. 3 of 2012]

**Date:** Wednesday, 30<sup>th</sup> May 2012

**Coram:** The Hon. Sir Hugh A. Rawlins, Chief Justice  
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

**Appeal**  
**The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant: Mrs. Kay Bacchus-Browne**

**Respondent: Mr. Stephen Williams**

**Issue:**

**Judgment debtor summons**

**Result / Order / Reason:**

**[Oral delivery]**  
**The appeal is withdrawn and accordingly dismissed with costs in the sum of \$500.00 to be paid by the appellant to the respondent.**

**Case name:**

**Kevin Westfield v The Commissioner of Police**  
**[Magisterial Criminal Appeal No. 48 of 2011]**

**Date:**

**Thursday, 31<sup>st</sup> May 2012**

**Coram:**

**The Hon. Mde. Janice M. Pereira**  
**The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]**

**Appearances:**

**Appellant: Mrs. Samantha Robertson**

**Respondent: Mr. Colin John with him Mr. Carl Williams**

**Issues:**

**Criminal appeal against sentence – Possession of an offensive weapon**

**Result / Order:**

**[Oral delivery]**  
**Matter is traversed to the next sitting of the Court of Appeal in St. Vincent and the**

Grenadines during the week of 17<sup>th</sup> to 21<sup>st</sup> September 2012.

**Reason:** The appellant's attorney requested an adjournment and the Court was minded to grant the request as the appellant is a patient at the Mental Health Facility and efforts to reach him were futile.

**Case name:** [1] Mando Lewis  
[2] Francis Thomas  
v  
[1] The Commissioner of Police

[Magisterial Criminal Appeal No. 19 of 2012]

**Date:** Thursday, 31<sup>st</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** First named appellant in person  
Mr. Grant Connell for the second named appellant  
**Respondent:** Mr. Colin John with him Mr. Carl Williams

**Issues:** Criminal appeal against sentence – Unlawful and malicious wounding

**Result / Order:** The matter is stood down until 2:30 p.m.

**Reason:** The second named appellant was not present in

**Court at the time the appeal was called.**

**Case name:** Venus Pitt v Koleen Thomas  
[Magisterial Civil Appeal No. 2 of 2012]

**Date:** Thursday, 31<sup>st</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira  
The Hon. Mr. Tyrone Chong, Justice of Appeal  
[Ag.]

**Appearances:**

<b>Appellant:</b>	In person
<b>Respondent:</b>	No appearance of and for the respondent

**Issue:** Claim for damages

**Result / Order:** [Oral delivery]  
1. The matter is adjourned to the next sitting of the Court of Appeal in St. Vincent and the Grenadines during the week of 17<sup>th</sup> to 21<sup>st</sup> September 2012.  
2. The Registrar should seek to serve the respondent with notice of the hearing.

**Reason:** The respondent was not served with any notice of hearing of the appeal.

**Case name:** Udorick Watson v The Queen  
[High Court Criminal Appeal No. 10 of 2011]

**Date:** Thursday, 31<sup>st</sup> May 2012

**Coram:** The Hon. Mr. Davidson K. Baptiste, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Gerard St. C. Farara, QC, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** In person  
**Respondent:** Mr. Colin John with him Mr. Carl Williams, and Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Making and using false instrument - Forgery

**Result / Order:** [Oral delivery]  
The appeal against sentence is allowed to the extent that the sentences of 2 years and 3 years are to run concurrently and not consecutively.

**Reason:** The allegation of bias by the appellant against the social welfare officer was not well-founded. In fact, the social welfare officer suggested that the appellant not be imprisoned.

On the issue of sentencing, the Court was of the view that the sentences imposed ought in the circumstances of the case run concurrently as both offences arose from the same action.

**Case name:** Godwin Sam v The Queen  
[High Court Criminal Appeal No. 5 of 2012]

**Date:** Thursday, 31<sup>st</sup> May 2012

**Coram:** The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mr. Don Mitchell, Justice of Appeal  
[Ag.]  
The Hon. Mr. Gerard St. C. Farara, QC, Justice  
of Appeal [Ag.]

**Appearances:**

**Appellant:** In person  
**Respondent:** Mr. Colin John with him Ms. Ayanna DaBreo

**Issues:** Criminal appeal against sentence – Burglary

**Result / Order:** [Oral delivery]  
The appeal is traversed to the next sitting of the  
Court of Appeal in St. Vincent and the  
Grenadines during the week of 17<sup>th</sup> to 21<sup>st</sup>  
September 2012.

**Case name:** Shorn Samuel v The Queen  
[High Court Criminal Appeal No. 22 of  
2008]

**Date:** Thursday, 31<sup>st</sup> May 2012

**Coram:** The Hon. Mr. Davidson K. Baptiste, Justice of  
Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal  
[Ag.]  
The Hon. Mr. Gerard St. C. Farara, QC, Justice  
of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Paul Bowen, QC, with him Mrs. Kay  
Bacchus-Browne  
**Respondent:** Mr. Colin Williams, Director of Public  
Prosecutions with him Mr. Colin John and Ms.  
Ayanna DaBreo

**Issues:** Criminal appeal against conviction and sentence – Murder

**Result / Order:** [Oral delivery]  
The appeal against conviction for murder is allowed, the murder conviction is quashed and a verdict of manslaughter is duly substituted and a term of life imprisonment imposed.

**Reason:** The expert witnesses of the Crown and the appellant, having discussed their reports, concurred in the conclusion that at the material time the appellant was suffering from an abnormality of mind which diminished his responsibility for the offence.

**Case name:** [1] Mando Lewis  
[2] Francis Thomas  
v  
[1] The Commissioner of Police

[Magisterial Criminal Appeal No. 19 of 2012]

**Date:** Thursday, 31<sup>st</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**  
**Appellant:** First named appellant in person  
Mr. Grant Connell for the second named appellant



**Respondent:** Mr. Colin John

**Issues:** Criminal appeal against sentence – Unlawful and malicious wounding

**Result / Order:** [Oral delivery]  
The appeals are dismissed and the sentences affirmed.

**Reason:** The Court looked at the circumstances of the case, the reasons given for the decisions, and the sentences imposed on the appellants. The Court came to the conclusion that there was nothing which suggested that the Magistrate erred in the sentences which were imposed.

**Case name:** Sonya Young v Vynette Frederick  
[High Court Civil Appeal No. 22 of 2011]

Nigel Stephenson v The Director of Public Prosecutions  
[High Court Civil Appeal No. 23 of 2011]

Vynette Frederick v The Director of Public Prosecutions  
[High Court Civil Appeal No. 24 of 2011]

Patricia M. Chance v The Director of Public Prosecutions  
[High Court Civil Appeal No. 25 of 2011]

Linton Lewis v The Director of Public Prosecutions  
[High Court Civil Appeal No. 26 of 2011]

**Date:** Thursday, 31<sup>st</sup> May 2012

**Coram:** The Hon. Mde. Janice M. Pereira, Justice of Appeal  
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]  
The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

**Appearances:**

**Appellant:** Mr. Anthony Astaphan, SC, with him, Mr. Grahame Bollers and Mr. Richard Williams in appeal no. 22 of 2011

Mr. Keith Scotland, with him, Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester in appeal nos. 23, 24, 25, and 26 of 2011

**Respondent:** Mr. Anthony Astaphan, SC, with him, Mr. Grahame Bollers and Mr. Richard Williams in appeal nos. 23, 24, 25 and 26 of 2011

Mr. Keith Scotland, with him, Mrs. Kay Bacchus-Browne and Ms. Nicole Sylvester in appeal no. 22 of 2011

**Issue:** Judicial review proceedings

**Result / Order:** [Oral delivery]

1. The appeals of Dr. Lewis, Ms. Frederick, Ms. Chance and Mr. Stephenson are dismissed.
2. The appeal of the Chief Magistrate, Ms. Young is allowed.
3. The order of costs made against the Chief Magistrate is set aside.
4. No order as to costs.

**Reason:** The Court found that it was not sufficient to simply make an allegation of a past association without some other connecting factor, to ground a finding of apparent bias. There was no evidence of the DPP having any association with the ULP since 1998, or of any association with his former law chambers and Dr. Ralph

**Gonsalves. Such past associations, without more, cannot form a sound basis for allegations of bias.**

**In addition, the Court found that the learned trial judge erred in principle in not setting aside the without notice orders, having found that there was a material non-disclosure by Ms. Frederick, which was intentional.**