IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Application No BZCV2023/003
BZ Civil Appeal No 25 of 2019

BETWEEN

WILFRED P ELRINGTON **APPELLANT**

AND

PROGRESSO HEIGHTS LIMITED **RESPONDENT**

Before: **Mr Justice Saunders, President**
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Burgess
Mr Justice Jamadar

Date of Judgment: **20 February 2024**

Appearances

Mr Wilfred P Elrington SC and Mrs Paulette Elrington-Cyrille for the Appellant

Ms Pricilla J Banner for the Respondent

Land – Cautions lodged on company lands – Authority of directors to commence claim on behalf of company – Whether claim legitimately brought by company – Whether company is properly before the Court – Appeal as of right – Procedure – Amending notice of appeal – Abuse of court processes – Importance of pleadings – Appeal against interlocutory decisions – Caribbean Court of Justice Act, CAP 92 – Registered Land Act, CAP 194 – Supreme Court (Civil Procedure) Rules 2005 – Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021.

SUMMARY

This appeal was from the Court of Appeal of Belize. The parties were Mr Wilfred P Elrington SC ('the Appellant' or 'Mr Elrington') and Progresso Heights Ltd ('the Respondent' or 'the company'). The Respondent is a company incorporated in Belize. The Appellant is a 20 per cent shareholder in the company. The directors of the company are father, Mr Lawrence Schneider ('Mr L Schneider') and son, Mr Adam Schneider. They hold the remaining 80 per cent of the company's shares.

The Appellant lodged several cautions against lands owned by the company. The company commenced claims in the Supreme Court against the Appellant and the Registrar of Lands to compel the removal of the cautions. The claims were consolidated, and the trial judge ruled in favour of the company. The trial judge found that the cautions were unlawfully lodged by Mr Elrington and unlawfully accepted by the Registrar of Lands in breach of her statutory duty. The trial judge ordered that the cautions be removed, and no further cautions were to be accepted without the permission of the Court. Special and general damages, interest and costs were awarded to the company.

Mr Elrington appealed to the Court of Appeal and that court noted that only one of the seven grounds of appeal challenged the primary finding of the trial judge. The Court of Appeal agreed with the trial judge that Mr Elrington was not entitled to lodge cautions against the company's lands since he did not have an unregistrable interest in those lands as required by the Registered Lands Act. As to the other six grounds of appeal which all concerned whether the proceedings were commenced by the company with the requisite authority, the Court of Appeal disposed of those grounds summarily as none of them had been raised by Mr Elrington in his defence. The question of whether the claim was legitimately brought by the company did not arise on the pleadings, and therefore, was not an issue. The appeal was dismissed, and the order of the trial judge affirmed.

Mr Elrington appealed to the Caribbean Court of Justice ('the Court'). In his original notice of appeal, Mr Elrington filed several grounds of appeal against the decision of the trial judge. These grounds included that *the trial judge's* decision was against the weight of the

evidence and that *the trial judge* erred in law in finding against the Appellant on whether the company had passed any resolutions authorising the directors or any of them to sell or otherwise dispose of any land belonging to the company. The grounds also included that *the trial judge* erred in being satisfied that Mr L Schneider had both actual and ostensible authority as director and agent of the company to sell the company's lands or to testify on behalf of the company. It was also claimed that the company was not properly a party to these proceedings. The Appellant also filed grounds of appeal against the decision of the Court of Appeal.

On the date of hearing of the appeal to this Court, the Appellant filed an application to amend his notice of appeal to substitute the words 'trial judge' or 'High Court' with the words 'Court of Appeal'. This Court dealt with the application to amend in its substantive judgment.

In the lead judgment of the Court, Rajnauth-Lee J identified two issues which arose for determination. The first was whether leave should be granted to the Appellant to amend his notice of appeal. The Court examined the ambit and objectives of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 in relation to applications to amend documents which had been filed in the Court. The Court was not minded to grant the application. It must have been clear to the Appellant that he could not appeal the findings of the trial judge before this Court. The Court noted that it is the decision of the Court of Appeal which is subject to the scrutiny of this Court. Notwithstanding the refusal of the application to amend, the Court determined the merits of the appeal on the assumption that the Appellant was challenging the decision of the Court of Appeal.

The second issue identified by Rajnauth-Lee J was whether the Court of Appeal was correct when it held that the Appellant could not succeed on his appeal due to his failure to plead that the proceedings were commenced by the company without the requisite authority. The Court emphasised the importance and function of pleadings to give fair notice of the case which has to be met so that the opposing party may direct their evidence to the issues disclosed by those pleadings.

The Court held that there was no reason to interfere with the view expressed by the Court of Appeal that the question whether the claim was legitimately brought by the company did not arise on the pleadings and was therefore not an issue. It has not been disputed that that issue was never raised in the Appellant's defence. In addition, the Appellant did not seek to strike out the claim brought by the company. Further, the Appellant did not seek to appeal the trial judge's ruling granting the company's application to permit Mr L Schneider's evidence to be given at the trial by video link, even though the trial judge had accepted by that ruling that Mr L Schneider had the requisite authority to make that witness statement. The Court also observed that the Appellant made no application to amend his defence to allege that the company's claim had been brought without the requisite authority, despite the strong objections by Counsel for the company during the cross-examination of Mr L Schneider on that issue.

Anderson J authored an Opinion which highlighted that the Appellant's appeal was brought as of right but may be struck out if this Court considered it an abuse of process or if the issues pleaded were not properly before the Court. He noted that abuse of process was a very high bar, and considered that there must be an element of, or akin to, a showing of bad faith. The Judge was not prepared to consider that this appeal had reached that bar. The Judge then considered whether there were other grounds on which it could be argued that the appeal was not properly before the Court.

Emphasising the importance of pleadings as providing the guardrails of litigation, Anderson J found that the application to amend the pleadings was not simply to amend clerical errors but went to the structure and substance of the case and had taken the Respondent by surprise. As such, Anderson J agreed that the application to amend should be refused.

Anderson J also found that there should not be deviation from pleadings that placed the other side at a disadvantage and in this instance, he found that six of the nine issues on appeal to the Court could not be considered as they had not been properly raised in the pleadings in the High Court. Where issues which were not anticipated arise, and which are

properly incorporated into the case of one or other of the parties, the attorney wanting such incorporation ought to make an oral or written application for an amendment of the pleadings. The simple solution would have been for Mr Elrington to have made an application to amend the pleadings at the appropriate time before the trial judge. This he had failed to do.

As this Court has no jurisdiction to hear appeals from decisions of trial judges, the Appellant's first six grounds of appeal were not properly before this Court.

Anderson J found that the remaining three grounds of appeal were against interlocutory decisions of the trial judge. He reiterated that there is no right of appeal of interlocutory decisions. This appeal could not be sustained as the remaining 3 issues were in essence an appeal from certain interlocutory proceedings before the trial judge for which leave had not been sought or granted. Accordingly, the appeal to the CCJ was not properly before the Court.

Following these judgments, the appeal was dismissed, the orders of the Court of Appeal were affirmed, and it was ordered that the Appellant pay to the Respondent costs of this appeal as agreed to by the parties.

Cases referred to:

A-G of Guyana v Dipcon Engineering [2017] CCJ 17 (AJ) (GY); *Barbados Rediffusion Service Ltd v Mirchandani (No 1)* [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35; *Elrington v Progresso Heights Ltd* (BZ CA, 24 June 2022); *Esso Petroleum Co Ltd v Southport Corp* [1956] AC 218; *Farrell v Secretary of State for Defence* [1980] 1 WLR 172; *John v CLICO International Life Insurance Ltd* [2019] CCJ 5 (AJ) (BB), (2019) 95 WIR 107; *LOP Investments Ltd v Demerara Bank Ltd* [2009] CCJ 4 (AJ) (GY), (2009) 74 WIR 333; *Nicholson v Nicholson* [2024] CCJ 1 (AJ) BZ; *Palmer v Guadagni* [1906] 2 Ch 494; *Progresso Heights Ltd v Pitts & Elrington* [2017] CCJ 12 (AJ) (BZ), BZ 2017 CCJ 4 (CARILAW); *Rolled Steel Products (Holdings) Ltd v British Steel Corp* [1985] 2 WLR 908; *Roseal Services Ltd v Challis* [2012] CCJ 7 (AJ) (BB), (2012) 81 WIR 51; *Sal Industrial Leasing Ltd v Hydtrolmech Automation Services Pte Ltd* [1998] 1 SLR 702; *St Matthews University School of Medicine Ltd v Sersland* (BZ CA, 7 December 2021); *Todd v Price* [2021] CCJ 2 (AJ) GY.

Legislation referred to:

Belize – Belize Constitution Act, CAP 4, Caribbean Court of Justice Act, CAP 92, Companies Act, CAP 250, Court of Appeal Act, CAP 90, Registered Lands Act, CAP 194, Supreme Court (Civil Procedure) Rules 2005.

Other Sources referred to:

Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021; Jamadar P and Braithwaite K J, *Exploring the Role of the CPR Judge* (Judicial Education Institute of Trinidad and Tobago 2017).

JUDGMENT

Rajnauth-Lee J (Saunders P, Burgess and Jamadar JJ concurring)

Concurring: Anderson J

RAJNAUTH-LEE J:

Introduction

[1] This is an appeal from the Court of Appeal of Belize. The parties are Mr Wilfred P Elrington SC ('the Appellant' or 'Mr Elrington') and Progresso Heights Ltd ('the Respondent' or 'the company'). On 28 March 2023, the Court of Appeal granted leave to the Appellant, to appeal to the Caribbean Court of Justice ('the Court'), its decision delivered on 28 September 2022.

[2] In his original notice of appeal filed on 7 June 2023, Mr Elrington appealed the whole judgment of the Supreme Court of Belize. He filed several grounds of appeal against the decision of Abel J, the trial judge. These grounds included that the trial judge's decision was against the weight of the evidence and that the trial judge erred in law in finding against the Appellant on whether the company had passed any resolutions authorising the directors or any one of them to sell or otherwise dispose of any land belonging to the company. The grounds also included that the trial judge erred in being satisfied that Mr Lawrence Schneider ('Mr L Schneider') had both

actual and ostensible authority as director and agent of the company to sell the company's lands, to testify on behalf of the company, and that the company was properly a party to these proceedings.

[3] Additionally, by way of the original notice of appeal, the Appellant appealed against the decision of the Court of Appeal as follows:

a. The Court of Appeal erred in law in holding at [24] of its judgment that 'the question whether the claim was legitimately brought by the company did not arise on the pleadings and, therefore, was not an issue' before the trial judge.

b. The Court of Appeal erred in stating at [26] of its judgment that the appellant told the Court of Appeal that he did not challenge the authority of Mr L Schneider to make his witness statement.

c. The Court of Appeal erred in holding at [26] of its judgment that 'having taken account of the submissions of both sides, their determination was that grounds i-vi were without merit and could not succeed.'

[4] Just prior to the hearing of this appeal, the Appellant indicated by email to the Court that he intended to amend his notice of appeal. On 7 November 2023, the very day fixed for the hearing of the appeal before the Court, Mr Elrington filed an application to amend his notice of appeal. He sought to alter the grounds of appeal to substitute the words 'trial judge' or 'High Court' with the words 'Court of Appeal'. In other words, he sought to assert that his appeal would not be against the decision of the trial judge, but the Court of Appeal. Having heard the parties on the application to amend, the Court indicated that it would deal with the application as part of its substantive judgment.

Background

[5] The company was incorporated in Belize on 21 July 2003. The Appellant and two other persons, father and son, Mr L Schneider and Mr Adam Schneider ('Mr A Schneider') respectively, were the subscribers to the company's memorandum and articles of association. The Appellant was a 20 per cent shareholder in the company. Mr L Schneider and Mr A Schneider held 80 per cent of the shares in the company with Mr L Schneider holding 55 per cent and Mr A Schneider 25 per cent.[1] Mr L Schneider and Mr A Schneider were the only two directors of the company. The company's main business was the commercial development and sale of its lands.

[6] Several cautions were lodged by Mr Elrington and accepted by the Registrar of Lands against 2,000 acres of land owned by the company. The cautions prohibited dealings with the land pursuant to s 130 of the Registered Lands Act ('the RLA'). Section 130(1)(a) of the RLA is relevant to this appeal. It allows any person claiming any unregistrable interest whatever in land to lodge a caution with the Registrar forbidding the registration of dispositions of the land concerned, and the making of entries affecting the same.

Supreme Court Proceedings

[7] On 18 November 2016, the company commenced two separate claims against the Appellant (Claim No 650 of 2016) and against the Registrar of Lands (Claim No 651 of 2016). The claims sought to compel the removal of the cautions which had been lodged by the Appellant. The main issue raised in these claims was whether the several cautions were wrongfully lodged by the Appellant and accepted by the Registrar of Lands in breach of her statutory duty. The ancillary issue of damages arose. The claims were consolidated.

[8] On 9 January 2017, the Appellant filed his defence in Claim No 650 of 2016 alleging at [1] that the two directors of the company fraudulently purported to sell

[1] This is a matter of record. See *Progresso Heights Ltd v Pitts & Elrington* [2017] CCJ 12 (AJ) (BZ), BZ 2017 CCJ 4 (CARILAW).

real estate, the company's property, using the company's name, and appropriated the proceeds of the said purported sales among themselves, their agents and among puppet entities, which entities included the company. This allegation of fraud was not supported by any particulars. It is noteworthy that apart from the allegation of fraud made in [1], the defence can be described as a bare defence by which Mr Elrington generally denied certain allegations made by the company in its claim.

[9] On 26 February 2018, the company filed an interlocutory application pursuant to the Supreme Court (Civil Procedure) Rules 2005 ('the CPR') seeking *inter alia* to have Mr L Schneider give his evidence at the trial by way of video link. This application was supported by the affidavit of Mr L Schneider. At the hearing of that application before Abel J, the trial judge, Mr L Schneider was cross-examined by Mr Elrington as to whether the company had authorised the commencement of the proceedings. Mr L Schneider was also questioned on whether he could produce documentation to establish that he was in fact authorised to make his witness statement. He stated that he had such authority and that he could demonstrate it by reference to the company's memorandum and articles of association. By a written ruling dated 6 August 2019, Abel J granted the company's application. It is important to note that Mr Elrington did not seek leave to appeal the trial judge's ruling.

[10] The trial proceeded before Abel J after extensive case management. The trial judge described it as a 'bitterly contested trial'. On 11 November 2019, Abel J delivered his written judgment[2] in favour of the company. He found that the cautions were unlawfully lodged by Mr Elrington and unlawfully accepted by the Registrar of Lands in breach of her statutory duty. He ordered the removal of all the cautions placed on the company's lands and directed the Registrar of Lands to refuse to accept any further cautions by Mr Elrington on the said lands without the court's permission. He also awarded special damages to be paid to the company in the sum

[2] The judgment was first delivered orally and in draft on 10 October 2019.

of USD119,679.44 and general damages in the sum of $1,000 per caution lodged. Interest and costs were also awarded to the company.

Proceedings Before the Court of Appeal

[11] Mr Elrington appealed the decision of the trial judge. The company cross-appealed against the trial judge's award of damages but withdrew the cross-appeal during the hearing before the Court of Appeal. The Registrar of Lands did not appeal the trial judge's judgment.

[12] The Court of Appeal (Hafiz-Bertram P (Ag), Minott-Phillips and Foster JJA) in a judgment delivered by Minott-Phillips JA upheld the decision of the trial judge. The court noted that only one of the seven grounds of appeal challenged the primary finding of the trial judge on the pleaded case. In that regard, the court agreed with the trial judge's statement that Mr Elrington had presented nothing to support the conclusion that by reason of his 20 per cent shareholding in the company and his interest in its profits by way of possible dividends, he had an unregistrable interest in the company's lands, which entitled him to lodge or register any cautions on those lands.

[13] As to the other six grounds of appeal which all touched and concerned the question of whether the proceedings were commenced by the company with the requisite authority, the Court of Appeal disposed of those grounds summarily on the basis that none of them was raised in Mr Elrington's defence. The court agreed with the trial judge that Mr Elrington was not entitled to rely on any allegation or factual argument not set out in his defence, particularly as he had not sought or obtained the permission of the trial judge to do so at any time during the course of the proceedings. The Court of Appeal emphasised that the question of whether the claim was legitimately brought by the company did not arise on the pleadings, and therefore, was not an issue. The appeal was accordingly dismissed, and the order of Abel J affirmed.

The Appeal and Issues for Determination Before this Court

[14] On 7 June 2023, Mr Elrington filed an appeal before this Court. As mentioned at [4] Mr Elrington has applied to amend the notice of appeal. The Registrar of Lands who played no active role at the trial or in the Court of Appeal, has played no part in this appeal. It is interesting to note that Mr Elrington has not appealed against the decision of the Court of Appeal that he had no unregistrable interest in the company lands which entitled him to lodge the cautions pursuant to s 130 of the RLA.

[15] Accordingly, the following issues arise for determination by the Court:

(1) Should leave to amend the Appellant's notice of appeal be granted?

(2) Was the Court of Appeal correct when it held that the Appellant could not succeed on his appeal since he had failed to plead that the proceedings were commenced by the company without the requisite authority?

Issue 1 – Should Leave to Amend the Appellant's Notice of Appeal be Granted?

[16] As mentioned earlier, the Appellant applied on the morning of the hearing of the appeal to amend his notice of appeal. The Respondent objected on the basis that this was in effect a different case that they were being asked to meet; they were accordingly being ambushed.

[17] The Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021 ('the Rules') allow an appellant to seek permission to amend the notice of appeal. At r 9.13, a document filed in connection with an appeal may be amended at any time before it has been served. Where it has been served, such a document may be amended only with the written consent of all the parties, or on an application made to the Registrar of the Court. Where such an application is made to the Registrar, the Registrar may invite submissions from the parties before making a decision or direct that the application be made to a single Judge of the Court seeking leave to amend, where

the Registrar is of the view that the application should be dealt with by a single Judge. Additionally, Pt 8 of the Rules sets out extensive powers of case management which can be exercised by the Court. Importantly, r 8(2)(n) allows the Court to take any step, give any other direction or make any other order for the purpose of managing any application or appeal and furthering the overriding objective. The overriding objective is concerned to ensure that unnecessary disputes over procedural matters are discouraged and that the ends of justice are met.

[18] Having considered the ambit and objectives of the Rules, the Court is not minded to grant the application to amend. It must have been clear to the Appellant that he could not appeal the findings of the trial judge before this Court. It is the decision of the Court of Appeal which is subject to the scrutiny of this Court. In addition, the Rules provide adequate procedures by which an application to amend the notice of appeal should be made. To wait until the day of the hearing to seek to amend the notice of appeal is unacceptable, and unfair to the Respondent, especially in the absence of any convincing grounds or reasons. The Rules exist to ensure that matters before the Court are dealt with efficiently and effectively. Late applications to amend a notice of appeal, or any other late application, particularly made on the day of the hearing, are to be seriously discouraged.

[19] Notwithstanding our decision to refuse the application to amend, we propose to determine the merits of the appeal on the assumption that the Appellant was challenging the decision of the Court of Appeal, and we shall proceed to do so.

Issue 2 - Was the Court of Appeal Correct When it Held that the Appellant Could Not Succeed On His Appeal Since He Failed to Plead that the Proceedings were Commenced by the Company Without the Requisite Authority?

[20] The Appellant relied on the CPR which provide for the manner in which litigation is conducted by a body corporate[3]. The Appellant submitted that no director or other

[3] See CPR 2005 (BZ) r 22.3(1) and (2).

officer of a corporate body has any inherent power or authority, by virtue of his office, to act for and/or on behalf of a corporate body.[4] It was argued by the Appellant that the company had the burden of establishing on a balance of probabilities that it had the right or capacity to bring its claim. In other words, it was argued that the company had the onus initially to satisfy the trial court that it had duly authorised a) the claim to be brought, b) Mr L Schneider to make the witness statement on its behalf, and c) Counsel to represent it in the claim.

[21] The company countered the Appellant's arguments, pointing out that these issues were not raised in the Appellant's defence, in any witness statement, or in any pre-trial memorandum in the trial court. In addition, the Respondent stated that during the trial, the Appellant cross-examined Mr L Schneider on whether the claim was authorised by the company. It was noted that Counsel for the company repeatedly objected to this cross-examination on the ground that it was not relevant and not an issue at the trial. The trial judge allowed the cross-examination to continue, but he noted the company's objections.

[22] After the evidence was given in the trial, the Appellant in his written submissions, argued that the company had not established that the claim was commenced with due authority. Counsel for the company however invited the trial judge to review the Appellant's defence and witness statement and argued that neither of these documents addressed the lack of authority to institute and maintain the claim. Further, it was contended on behalf of the company that in violation of the order of the trial judge, the Appellant failed to file a pre-trial memorandum. On the other hand, the company filed its pre-trial memorandum and the issue of lack of authority was not raised as an issue to be tried.

[23] The trial judge agreed with Counsel for the company on the pleading point that the evidence relating to authorisation which was elicited during the cross-examination

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[4] *Sal Industrial Leasing Ltd v Hydtrolmech Automation Services Pte Ltd* [1998] 1 SLR 702.

of Mr L Schneider should be disregarded since 'such evidence was not properly in issue from the pleadings'.[5]

[24] A similar issue concerning the pleaded case arose in earlier proceedings between the parties which came before this Court. In *Progresso Heights Ltd v Pitts & Elrington* [6] at [10], this Court held that:

> It is immediately obvious that the pleadings were deficient, in particular, when no reasons were provided for the bare denial in paragraph 3 of the Defence (and re-iterated in paragraph 22 of Mr Elrington's Witness Statement) that no defendant had been retained by Progresso at any time for any purpose whatsoever. Since then, Mr Elrington has put forward various reasons to support such bare denials. *Indeed, he has even argued that the claim against him by Progresso had not been duly authorised. These matters need to be raised openly and upfront so as not to ambush a claimant. That is a key reason why Rule 10.5(4) of the Belize Civil Procedure Rules requires the reasons for a bare denial of an apparently valid claim to be spelled out.*[7]

[25] The case of *Todd v Price*[8], which was also heard by this Court, is also instructive. The appeal in that case was against a finding of fraud made by the Court of Appeal of Guyana which reversed the express finding by the trial judge that the appellant, Merlene Todd, was not privy to the fraud by which she obtained transport to the parcel of land in dispute. Barrow J, delivering the judgment of the Court, observed that allegations of fraud had not been pleaded and the appellant, Merlene Todd, was not given an opportunity to respond to or defend herself against those allegations. In addition, Anderson J expressed the view that an appellate court ought to be especially slow in overturning a trial judge's determination of the scope of the pleadings, especially where it appears that the scope of those pleadings, as found by the judge, was accepted by the parties. In the circumstances, the orders of the Court of Appeal were set aside.

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[5] See [187] of the trial judge's judgment.
[6] *Progresso Heights* (n 1) at [10] (Hayton J).
[7] ibid (emphasis added).
[8] [2021] CCJ 2 (AJ) GY.

[26] In the case of *Rolled Steel Products (Holdings) Ltd v British Steel Corp*[9] Lawton LJ pointed to the proper approach to be taken by a trial judge when there is cross-examination on an issue that has not been pleaded. He stated:

> When counsel raises an objection to a question or a line of questioning, as Mr. Morritt did on a number of occasions, the trial judge should rule on it at once. He should not regard the objection as a critical commentary on what the other side is doing. If the judge does not rule, counsel should ask him to do so. If a line of questioning is stopped because it does not relate to an issue on the pleadings, counsel should at once consider whether his pleadings should be amended. If he decides that they should, he should forthwith apply for an amendment and should specify precisely what he wants and the judge should at once give a ruling on the application.[10]

[27] Rule 10.5(1) of the CPR requires a defendant to include in the defence all the facts on which reliance is placed to dispute the claim. Rule 10.5(4) provides that where the defendant denies any of the allegations in the claim form or statement of claim, the reasons for doing so must be stated, and if there is an intention to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.

[28] It is accepted that the function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct their evidence to the issues disclosed by those pleadings.[11] Pleadings must therefore give fair and proper notice of the issues intended to be raised. This is essential to prevent the other party being taken by surprise.[12] Parties must be informed in advance of the case they have to meet as to enable them to take steps to deal with it.[13] Indeed, by virtue of r 10.7 of the CPR, a defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission.

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[9] [1985] 2 WLR 908.
[10] ibid at 960.
[11] *Esso Petroleum Co Ltd v Southport Corp* [1956] AC 218 at 238(Lord Normand). See also Peter Jamadar and Kamla Jo Braithwaite, *Exploring the Role of the CPR Judge* (Judicial Education Institute of Trinidad and Tobago 2017) 23-24 on the role of pleadings.
[12] *Palmer v Guadagni* [1906] 2 Ch 494 at 497 (Swinfen Eady J).
[13] *Farrell v Secretary of State for Defence* [1980] 1 WLR 172 at 180 (Lord Edmund-Davies).

[29] In these circumstances, we see no reason to interfere with the view expressed by the Court of Appeal that the question whether the claim was legitimately brought by the company did not arise on the pleadings and was therefore not an issue. It has not been disputed that that issue was never raised in the Appellant's defence. In addition, the Appellant did not seek to strike out the claim brought by the company. Further, the Appellant did not seek to appeal the trial judge's ruling dated 6 August 2019, granting the company's application to permit Mr L Schneider's evidence to be given at the trial by video link, even though the trial judge had accepted by that ruling that Mr L Schneider had the requisite authority to make that witness statement. It is also important to observe that the Appellant made no application to amend his defence to allege that the claim had been brought without the requisite authority, despite the strong objections by Counsel for the company during the cross-examination of Mr L Schneider on that issue.

Conclusion

[30] For the foregoing reasons, we will dismiss the appeal and affirm the orders of the Court of Appeal. We will also order that costs of this appeal be paid by the Appellant to the Respondent as agreed between the parties.

ANDERSON J (concurring):

[31] This appeal must be dismissed because it is not properly before the Court. The factual and procedural background and the rationale for this decision follow.

Factual Background

[32] Progresso Heights Ltd ('Progresso' or 'PHL') is a private limited liability company which was incorporated in Belize on 21 July 2003 under the Companies Act of Belize[14]. There are three shareholders. Lawrence Schneider holds 55 per cent of the shares. His son, Adam Schneider, holds 25 per cent. The Appellant holds the remaining 20 per cent. Lawrence and Adam Schneider are American citizens and

[14] CAP 250.

the only two directors of Progresso. As per its memorandum of association, a primary objective of PHL is to purchase or otherwise acquire lands, real estate, and other property and to subdivide, sell, lease, exchange, mortgage or otherwise deal with and manage properties.

[33] Most unfortunately, there was a breakdown in the relationship between the Appellant and the other two shareholders which led to litigation beginning in June 2010. An appeal from this litigation has already been heard in this Court[15].

[34] The present appeal concerns several cautions lodged by the Appellant against 2,000 acres of Progresso's land which brought Progresso's business to a virtual standstill. The substantive question in this litigation is whether these cautions were unlawfully lodged by the Appellant and accepted by the Registrar of Lands in breach of her statutory duty, and, if so, the damages payable to Progresso. These were the substantive issues in the hearing in the High Court but during the course of litigation there and in the Court of Appeal, these issues became overladen to the point of being obscured by a myriad of procedural issues having to do with the scope of the pleadings and the capacity in which proceedings were brought.

Procedural Background

High Court

[35] The claims brought by Progresso against the Appellant and the Registrar of Lands to remove the cautions were heard over 14 days between 18 March and 11 October 2019. Prior to the trial, Abel J considered and granted an application for Lawrence Schneider to give evidence by video link.[16] During the trial, the Appellant raised issues which were not formally pleaded by him. These included whether Lawrence Schneider and attorneys-at-law acting on the instructions of Lawrence Schneider were authorised by Progresso to bring the claim. And whether Lawrence Schneider was authorised by Progresso to testify on behalf of the company.

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[15] *Progresso Heights* (n 1).
[16] Application filed in the High Court on 26 February 2018, and granted by Abel J on 29 May 2019.

[36] At the end of the hearing in October 2019, and perfected by Order on 23 December 2019, Abel J held and ordered that the cautions were all unlawfully lodged and had been registered by the Registrar of Lands in breach of her statutory duty. He ordered the removal of the cautions 'forthwith' and that the Registrar refused to accept any further caution by the Appellant on Progresso's lands without the permission of the court. Special damages of USD119,679.44 were to be paid to Progresso by the Appellant as well as general damages assessed in the sum of $1,000 per caution, and interest on both special and general damages at 6 per cent per annum from the date of the filing of the claim until payment by the Appellant. Costs were also ordered against the Appellant.

Court of Appeal

[37] On 31 December 2019, the Appellant filed an appeal in the Court of Appeal against the order of Abel J. There were seven grounds of appeal but only the last challenged the primary finding of the trial judge made on the pleaded case that the Appellant had no sufficient basis in law for lodging the cautions. The other six grounds sought mainly to challenge admission into evidence of an affidavit sworn by Carla Sebastian pursuant to her duties as a paralegal in the firm representing Progresso and of the Minutes of the Annual General Meeting of 19 November 2015 showing that Progresso had by resolution, determined to commence litigation against the Appellant, and had retained attorneys for that purpose. These grounds also alleged that the judge erred and misdirected himself in several particulars including in finding that Progresso had confirmed and ratified the actions of its directors in the management of the operations of the company and in authorising Lawrence Schneider to commence proceedings and to be a witness in the case.

[38] In a judgment dated 24 June 2022 and promulgated 28 September 2022, the Court of Appeal dismissed the appeal in its entirety[17]. The court dealt extensively with

[17] *Elrington v Progresso Heights Ltd* (BZ CA, 24 June 2022).

the ground challenging the lawfulness of the cautions. It held that Abel J was correct to conclude that under the Registered Lands Act, CAP 194 ('RLA') that implements in Belize, the Torrens system of landholding, a necessary pre-condition of, and the on-going basis for, the lodging, registration and maintenance of a caution is the requirement that the cautioner has an unregistrable interest in lands. The court accepted[18] the finding of the trial judge that:

> In relation to this question, this Court has concluded that Mr Elrington has presented this Court with nothing to support the conclusion that by reason of his twenty (20) percent shareholding in PHL, and his interest in its profits by way of possible dividends, he has an unregistrable interest in PHL's Lands, and is thereby entitled to have lodged or have registered any cautions on such lands. On the contrary, this Court has concluded, based on the clear reading of all the relevant provisions of the RLA in relation to lodging and registering cautions, that as a matter of principle, and expressly (by Mr Elrington), the interest which he has is in the 'profits' and not any lands which PHL owns.

[39] The Court of Appeal also agreed with Abel J that s 134 of the RLA provided a remedy by way of financial compensation against the person who wrongly lodges or maintains a caution. The court found that there was ample evidence for the trial judge to have concluded that the Appellant had tortiously interfered with (or caused loss by unlawful means to Progresso in respect of its contracts with purchasers of the land. The court noted that the Appellant had not separately taken issue with the amount of the damages awarded against him. So that the ground of appeal relating to the correctness of the award of damages and costs failed consequentially upon the collapse of the premise underpinning it.

[40] The Court of Appeal gave short shrift to the other grounds of appeal. At [23] to [26] the court stated as follows:

> [23] It was the view of Abel, J. with respect to his determinations that are the subject of the remaining grounds *i-vi* of the appeal, that the issues subject of those determinations could be disposed of summarily, as none of

[18] ibid at [18].

them was raised in Mr Elrington's defence to the claim. According to the learned Judge, Mr Elrington was not entitled to rely on any allegation or factual argument not set out in his defence, particularly as he had not sought, or obtained, the permission of the court to do so at any time during the course of the proceedings.

[24] Claim No 650 of 2016 was filed by PHL against Mr Elrington seeking, *inter alia*, the removal of the cautions he unlawfully lodged against its property. Mr Elrington filed a defence to the action but, as noted by Abel, J., he filed no counterclaim or ancillary claim. The question whether the claim was legitimately brought by PHL did not arise on the pleadings and, therefore, was not an issue. In those circumstances, and with Mr Elrington holding only 20% of PHL's shares, I discern no basis upon which he could properly challenge PHL's right to file and prosecute its claim.

[25] The court below was obliged to be, and clearly was, mindful of PHL's status as a legal person able to do all such things as can be done by legal persons, natural or corporate (such as initiating suit and giving evidence).

[26] In his Reply to Ms Banner's submissions, Mr Elrington stated, by way of what seemed to be clarifications of his position, that at no time was he questioning the legitimacy of the company to make the claim. He told this court he was not seeking to impugn the authority of the company to make the claim and said to us that he did not challenge the authority of LS to make his witness statement. We appreciate the clarifications. Having taken account of the submissions of both sides our determination is that grounds *i-vi* of appeal are without merit and cannot succeed (footnotes omitted).

Caribbean Court of Justice ('CCJ')

[41] The Appellant was granted leave to appeal to this Court by order of the Court of Appeal dated 28 March 2023. That grant was under s 6(a) of the Caribbean Court of Justice Act ('CCJ Act')[19], s 104(1)(a) of the Belize Constitution[20], and r 10.3(1) and (2) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2021. The appeal was thus certified as of right on the basis that it was obtained in civil proceedings where the matter in dispute was of the value of not less than BZD18,250 or that it involved 'directly or indirectly a claim or a question respecting property or a right of the aforesaid value'.

[19] CAP 92.
[20] CAP 4.

[42] Progresso opposed the application and argued that the appeal was not properly before the Court because it raised no genuinely disputable point of law and that it was frivolous, vexatious, and perverse, and an abuse of process of the Court in the terms considered in *LOP Investments Ltd v Demerara Bank Ltd*[21].

Rationale

Appeal as of Right

[43] The appeal to this Court was certified by the Court of Appeal as being an appeal as of right. There was therefore no need for the Appellant to demonstrate that there was a genuinely disputable issue of fact or law to obtain leave. In *LOP Investments Ltd v Demerara Bank Ltd*[22] this Court found that the Court of Appeal erred in refusing leave on the ground that the appeal 'did not raise a genuinely disputable issue of fact or law'. The appeal was as of right. The Court of Appeal was therefore wrong to believe that it had a residual discretion and had wrongly refused leave to appeal. This guidance has been followed in subsequent cases by the Court of Appeal: *St Matthews University School of Medicine Ltd v Sersland.*[23]

[44] The only requirement under s 104(1) of the Constitution and s 6(a) of the CCJ Act is that the Applicant demonstrates to the Court that (i) the proceedings are civil in nature and (ii) the matter in dispute is of the value prescribed, or (iii) the appeal involves a claim or question respecting property or a right of equivalent value. Where these conditions are satisfied, the Applicant must be granted leave, though such leave may be subject to appropriate conditions relating, for example, to the filing of the requisite documents. In the present case, the prescribed conditions were met.

[45] Admittedly, even an appeal 'as of right' may be struck out if the Court considers that it is an abuse of process or if the issues pleaded were not properly before the

[21] [2009] CCJ 4 (AJ) (GY), (2009) 74 WIR 333.
[22] ibid.
[23] (BZ CA, 7 December 2021). See also the CCJ Act (n 19).

Court. As to abuse of process, it is clear that the Court must always remain master of its processes. But abuse of process is a very high bar. Without attempting to state precisely what would be required to satisfy that requirement, I would say that there must be an element of, or akin to, a showing of bad faith. I am not prepared to say that this appeal was an abuse of the process of the Court.

[46] The foregoing notwithstanding, it may be that the pleadings and the corresponding grounds of appeal do not fall within the jurisdictional ambit of the Court. This is the matter to which I must now turn.

Pleadings

[47] As I have had cause to say on another occasion,[24] pleadings are the alpha and omega of litigation in our legal system. They are the guardrails which guide the commencement, progression, and disposition of the case. The rules governing pleadings are therefore not optional. They are pivotal. They are mandatory. They are to be complied with by the parties lest chaos overtakes the process of adjudication and lest the unruly horse of litigation be allowed to roam free.

[48] This case is a perfect example of the disorder that can overtake litigation that becomes untethered from the pleadings. The substantive question before the High Court concerned the lawfulness of the cautions which the Appellant caused to be lodged against land belonging to Progresso. Before the litigation left the High Court, issues of whether Progresso was properly before the Court and of whether a director and largest shareholder could give testimony threatened to take center stage. By the time the matter was heard in the Court of Appeal only one of the seven grounds confronted the legality of the cautions; the other six grounds presented issues that arose during cross-examination. Finally, the pleadings and grounds of appeal presented to this Court were entirely innocent of any mention of cautions. This cannot be the proper way to conduct litigation.

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[24] *Nicholson v Nicholson* [2024] CCJ 1 (AJ) BZ.

[49] This Court has criticised deviation from pleadings that places the other side at a disadvantage. In *Todd v Price*[25], this Court commented unfavorably on allegations of fraud and gross negligence which were not pleaded and in respect of which the appellant was not given an opportunity to respond to or defend herself. And in the earlier proceedings between these very parties in *Progresso Heights Ltd v Pitts & Elrington*[26] at [10] this Court said:

> It is immediately obvious that the pleadings were deficient, in particular, when no reasons were provided for the bare denial in paragraph 3 of the Defence (and re-iterated in paragraph 22 of Mr Elrington's Witness Statement) that no defendant had been retained by Progresso at any time for any purpose whatsoever. Since then, Mr Elrington has put forward various reasons to support such bare denials. *Indeed, he has even argued that the claim against him by Progresso had not been duly authorised. These matters need to be raised openly and upfront so as not to ambush a claimant. That is a key reason why Rule 10.5(4) of the Belize Civil Procedure Rules requires the reasons for a bare denial of an apparently valid claim to be spelled out.*[27]

[50] On the other hand, the rules of procedure are not a straitjacket. The dynamism of trial is such that issues could arise that the greatest prescience could not have anticipated, and which are properly incorporated into the case of one or other of the parties. Where such an issue arises, the simple solution is for the attorney to make an oral or written application for an amendment of the pleadings. As Lawton LJ opined in *Rolled Steel Products (Holdings) Ltd v British Steel Corp*[28] at 960:

> When counsel raises an objection to a question or a line of questioning, as Mr. Morritt did on a number of occasions, the trial judge should rule on it at once. He should not regard the objection as a critical commentary on what the other side is doing. If the judge does not rule, counsel should ask him to do so. If a line of questioning is stopped because it does not relate to an issue on the pleadings, counsel should at once consider whether his pleadings should be amended. If he decides that they should, he should forthwith apply for an amendment and should specify precisely what he wants and the judge should at once give a ruling on the application.

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[25] *Todd* (n 8).
[26] *Progresso Heights* (n 1).
[27] ibid (emphasis added).
[28] *Rolled Steel* (n 9).

[51] The amendment must naturally be sought at the earliest opportunity. As soon as it becomes obvious from cross-examination or otherwise that circumstances have changed, the attorney must seek amendment to the pleadings. The attorney must be prepared to argue persuasively for the change or augmentation to the pleadings since such could wrongfoot the other side. The judge, as neutral umpire, will decide where the balance of justice lies.

CCJ Pleadings Against Decisions of the Trial Judge

[52] The Notice of Appeal filed in this Court dated 31 May 2023, appealed against the judgment of the High Court promulgated on 11 November 2019. It also cited the Order of the Court of Appeal granting leave to appeal to the Court against the judgment of the Court of Appeal promulgated on 28 September 2022.

[53] In his pleadings, the Appellant presented nine grounds of appeal none of which challenged the substantive holding of the courts below concerning the unlawfulness of the cautions lodged by the Appellant against Progresso's land nor the award or quantum of damages. The first six grounds of appeal were against the judgment of the trial judge and alleged that certain findings of the trial judge were against the weight of the evidence or were made in error because the judge misled or misdirected himself. The remaining three grounds of appeal were against the decision of the Court of Appeal and alleged that the court erred in certain particulars. The principal complaint, and the one which occupied virtually all the oral submissions before this Court, was that Progresso was not properly before the High Court and that Lawrence Schneider was not competent to commence proceedings or give testimony on behalf of Progresso.

Application to Amend CCJ Pleadings

[54] On 7 November 2023, the day of the hearing, the Appellant made an oral application for leave to amend the Notice of Appeal essentially to clarify that the appeal was against the judgment of the Court of Appeal and not against that of the

trial judge. An amendment would necessarily be essential since it is trite law that this Court hears appeals from the Court of Appeal and not from the decisions of a trial judge: CCJ Act of Belize[29].

[55] Contrary to the arguments of the Appellant, the amendment was not merely to correct 'clerical errors'. The notice of appeal sought to challenge the decisions of the trial judge and the weight placed by the trial judge upon certain pieces of evidence. The proposed amendment would therefore go to the pith and structure of the case prepared for this hearing. Made, as it was, literally on the eve of the hearing, the application evidently caught Progresso by surprise and was opposed by the company. I consider that it was much too late in the day to make this structural adjustment to the case, and I would therefore refuse the application to amend the pleadings. The Appellant must abide by his pleaded case. As this Court has no jurisdiction to hear appeals from decisions of trial judges it follows that the first six grounds of appeal, that is (a) to (f), are not properly before this Court.

Appeal Against the Interlocutory Decisions

[56] The remaining three grounds of appeal against the decision of the Court of Appeal were enumerated as follows:

> (g) The Court of Appeal erred in law by holding [at para 24 judgment p. 10] that "The question whether the claim was legitimately brought PHL did not arise on the pleadings and, therefore, was not an issue."
>
> (h) The Court of Appeal erred in stating [at para 26 judgment p. 10] that "he [Mr Elrington] told this court … he did not challenge the authority of L.S. to make his witness statement."
>
> (i) The Court of Appeal erred in holding [at para 26 judgment p. 10] "Having taken account of the submissions of both sides our determination is that grounds I-V … are without merit and cannot succeed."

[29] (n 19).

[57] These three grounds of appeal concern the decisions arising from the hearing of the application on 12 July 2019 for Lawrence Schneider to give evidence by video link. The findings by the trial judge regarding the authority of Lawrence Schneider to be a witness for Progresso and to conduct proceedings on behalf of Progresso were clearly made in those interlocutory proceedings. Under the Court of Appeal Act, CAP 90, appeals from interlocutory decisions require leave from the Court of Appeal. No such leave was requested or granted. The Appellant has frankly conceded that the decisions were made in interlocutory proceedings and that he took the deliberate and strategic decision not to appeal the interlocutory decisions.

[58] It bears emphasis that there is no right of appeal of interlocutory decisions even in civil cases where the value of the claim passes the statutory threshold for appeals as of right. It is true that s 6 of the CCJ Act of Belize,[30] grants the right of appeal where the claim passes the value of BZD18,250, or where the appeal involves directly or indirectly a claim or a question respecting property or a right of this value. However, s 7 of that Act provides that appeals lie to the CCJ with the leave of the Court of Appeal from the decisions of the Court of Appeal where there is a final decision (as distinct from interlocutory decisions) in any civil proceedings where, in the opinion of the Court of Appeal, the question is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Court and in such other cases as may be prescribed by any law. Section 8 of the Act provides that subject to s 7, an appeal shall lie to the Court with the special leave of the Court from any decision of the Court of Appeal in any civil or criminal matter. The distinction between the right to appeal and the requirement for leave to appeal interlocutory decisions is maintained in the Court of Appeal Act of Belize.

[59] In *Barbados Rediffusion Service Ltd v Mirchandani (No 1)*[31], this Court examined the relationship between ss 7 and 8 of the CCJ Act of Barbados which are akin to the sections in the CCJ Act of Belize. At [28], this Court clarified that it is not

[30] (n 19).
[31] [2005] CCJ 1 (AJ) (BB), (2005) 69 WIR 35.

necessary for an applicant to apply for leave to appeal in the CCJ before the Court of Appeal prior to applying for special leave under s 8. This Court stated at [29]:

> We do not agree that the words 'Subject to section 7' have that effect. It is true that, when one provision is expressed to be subject to another, the effect is to make the first provision subordinate to the second so that, to the extent that full force and effect cannot be given to both provisions without a conflict between them arising, the first provision must yield to the second. The impact of these words, therefore, depends very much on the content and scope of each provision. *In the instant case both ss 7 and 8 provide different routes by which a party aggrieved by a decision of the Court of Appeal may reach this court. The route via s 7 involves the obtaining of leave from the Court of Appeal on certain grounds which are specified in that section. The route via s 8 involves obtaining special leave from this Court on grounds which are unspecified but are left to be determined by us.* Notwithstanding the use of the words 'Subject to section 7' in 8, these two routes are separate and independent of each other and do not intersect. The limitations imposed by s 7 on the grant of leave by the Court of Appeal do not apply to the grant of special leave by this Court under s 8. Clearly the words 'Subject to section 7' do not have that effect. Similarly, it would be reading far too much into those words to construe them as requiring that every application made to this court for special leave under s 8, must be preceded by an (unsuccessful) application for leave under s 7. If that had been the intention, one would have expected the draftsman to so provide in clear and explicit terms (emphasis added).

[60] *John v CLICO International Life Insurance Ltd*[32] illustrates a situation where an order appeared to be interlocutory, but the value of the claim exceeded the as of right threshold. In that judgment at [21], it was emphasised that special leave to appeal must first be sought from the CCJ in the case of interlocutory appeals. In that case, because of the monetary amount in dispute, the appellants had sought and obtained leave to appeal as of right to the CCJ in the Court of Appeal. At [23], the CCJ looked at the order made in the proceedings and found that it was a final order giving rise to an as of right appeal to the CCJ as assumed by the Court of Appeal.

[61] The Court continued to say at [24] that even if the Court of Appeal had erred and found that the appeal was an interlocutory one rather than final and as of right, the

[32] [2019] CCJ 5 (AJ) (BB), (2019) 95 WIR 107.

CCJ would have exercised its power under s 8 of the CCJ Act to grant special leave to hear an interlocutory appeal.

[62] In *Roseal Services Ltd v Challis*[33], this Court looked at whether an appeal lay as of right in the CCJ pursuant to s 6(a) of the CCJ Act of Barbados. At [19], the Court held that there was no appeal as of right against the interlocutory order made in the proceedings (an order made granting or refusing leave to appeal is interlocutory). However, the Court may entertain an appeal if it considered that special leave would have been granted under the special leave provisions in the CCJ legislation. Paragraph [19] reads:

> Even in a case like this, however, the court may entertain an appeal if it considered that special leave would have been granted under s 8 of the CCJ Act had it been applied for. In *Griffith v Guyana Revenue Authority* (with reference to a similarly worded CCJ Act in Guyana) this court stated:
>
> > '[Section 8] is intended to apply to cases which do not fall within either s 6 or s 7 of that Act, ie cases where the appeal does not lie as of right and leave to appeal cannot be obtained from the Court of Appeal.' (footnote omitted)

[63] The CCJ discussed the interpretation of the as of right sections in the CCJ Act at length in *Roseal* (see [31] to [45]) and concluded that as of right appeals to the CCJ under s 6(a) of the CCJ Act do not extend to interlocutory orders of the Court of Appeal in civil proceedings.

[64] In *Attorney General of Guyana v Dipcon Engineering*[34]*,* leave was given by the Court of Appeal for the State to appeal as of right to the CCJ, pursuant to s 6(a) of the CCJ Act of Guyana. That section provides that where the matter in dispute on appeal is above a certain value an appellant has the right to appeal; it does not require the appellant to obtain permission to appeal. However, this Court reiterated

[33] [2012] CCJ 7 (AJ) (BB), (2012) 81 WIR 51.
[34] [2017] CCJ 17 (AJ) (GY).

that the appeal did not fall within s 6 of the Act because the matter in dispute was a solely procedural issue.

[65] Accordingly, on reading s 6 as of right provisions and the s 7 requirement that interlocutory orders be appealed with leave of the Court, it is evidently now trite law that once an order is interlocutory, the s 6 as of right provision cannot apply and the aggrieved party must obtain leave to appeal from the Court of Appeal or apply for special leave in the CCJ under s 8. Where the value of the claim is equal to or above the threshold value stated in the as of right provision and the order seeking to be appealed is an interlocutory order, the as of right provision does not apply. The provision barring appeals of interlocutory orders without the leave of the Court takes precedent.

[66] It therefore follows, in this case, that the interlocutory decisions made in the interlocutory proceedings held on 12 July 2019, and in respect of which leave of the Court of Appeal was not sought or given, cannot, without more, be properly appealed to this Court.

Conclusion

[67] It is for these reasons that I would dismiss this appeal as not being properly before the Court and would order costs against the Appellant.

Disposition

[68] For the foregoing reasons, it is hereby ordered as follows:

(a) The appeal is dismissed.

(b) The orders of the Court of Appeal are affirmed.

(c) The Appellant shall pay to the respondent costs of this appeal agreed to by the parties in the sum of BZD50,000.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ A Burgess

Mr Justice Burgess

/s/ P Jamadar

Mr Justice Jamadar