BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No. 8 of 2016

BETWEEN:

LEROY PARRIS
BRANLEE CONSULTING SERVICES INC.
THE ESTATE OF DAVID THOMPSON **Appellants**
(Acting through duly appointed personal representative Marie-Josephine Mara Thompson)

AND

CLICO INTERNATIONAL LIFE INSURANCE LTD **Respondent**
(In Judicial Management)

Before: The Hon. Sandra P. Mason, The Hon. Andrew D. Burgess, The Hon. Kaye C. Goodridge, Justices of Appeal

2016: October 27
2018: March 16

Appearances:
Mr. Hal Gollop QC in association with Mr. Michael Yearwood and Mr. Neil Marshall for the First Appellant
Mr. Vernon Smith QC in association with Mr. Steve Gollop for the Second Appellant
Mr. Edmund King QC appearing for the Third Defendant
Mr. Ramon Alleyne in association with Mr. Michael Koeiman for the Respondent

DECISION

BURGESS JA:

INTRODUCTION

[1] This is an appeal against the decision of **Gibson CJ**, sitting as a High Court judge, to dismiss the application of the first defendant/first appellant, Mr. Leroy Parris, (Mr. Parris), and the second defendant/second appellant, Branlee Consulting Services Inc., (Branlee Consulting), in which they sought the discharge of the freezing order, commonly known as the **Mareva** injunction, which was granted on 29 January 2015 to the claimant/respondent, CLICO International Life Insurance Ltd (In Judicial Management), (CLICO Life), by **Chandler J**.

[2] This is also a cross-appeal in this appeal against the order of **Gibson CJ** to strike out CLICO Life's action against the third defendant, "The Estate of David Thompson (acting through duly appointed Personal Representative Marie-Josephine Mara Thompson)".

[3] We feel bound to intimate here that, in approaching this judgment, we were keenly aware that this is the first case involving the **Mareva** injunction to reach the Court of Appeal. **Mareva** injunctions have been heard on a number of occasions in the High Court: **Coney Island Caribbean Amusement Inc. v Good Times Shows Inc et al (1984) 37 WIR 79 (Coney Island)**; **Vantage**

Distributors Ltd v Top Mode Ltd (unreported) Suit No. 1337 of 1992; **McDonald Farms Ltd et al v The Advocate Co Ltd (unreported) Suit No. 344 of 1989**; **Greenidge v Clico Holdings B'dos Ltd (unreported) Suit No. 148 of 2000**; **Altman Estate (A Firm) v Cushman & Wakefield of California Inc et al (unreported) Suit No. 2192 of 2012**; **Premier Event Services Inc v Aiken and Spring LCC (unreported) Suit No. 1736 of 2015**; and **Grenville Winslow Phillips (Receiver/Manager) v RCTD Holding Ltd and Silver Point Villa Hotel Inc (unreported) Suit No. 1526 0f 2016**. So that, even though **Mareva** injunctions have been considered in the High Court on a number of occasions, this case provides the opportunity for this Court to pronounce on the **Mareva** remedy in this jurisdiction.

FACTUAL & PROCEDURAL BACKGROUND

Dramatis Personae

[4] CLICO Life, the claimant/respondent, is a company incorporated under the **Companies Act Cap. 308 (Cap. 308)**. At all material times, CLICO Life carried on the business of the provision of life insurance under the **Insurance Act Cap. 310 (Cap. 310)** at CLICO Corporate Centre, Walrond Street, St. Michael.

[5] CLICO Life is a subsidiary of CLICO Holdings (Barbados) Limited (CLICO Holdings). CLICO Holdings is a company incorporated under the provisions

of **Cap. 308**, and, at all material times, carried on business at the CLICO Building, Whitepark Road, Bridgetown.

[6] CLICO Life and CLICO Holdings form part of a diverse group of companies established under their holding company, CL Financial Limited (CL Financial), a company incorporated under the laws of Trinidad and Tobago. CL Financial, at one time the largest Trinidadian based conglomerate, mushroomed over decades into an array of companies, associates and subsidiaries across the Caribbean and beyond, under the chairmanship of Mr. Lawrence Duprey (Mr. Duprey).

[7] Mr. Parris, the first defendant/first appellant, resides at No. 8 Dayrells Heights, St. Michael. He was instrumental in expanding the asset base of CLICO Holdings, and transforming CLICO Life and CLICO International General Insurance Company Limited, another subsidiary of CL Financial, into profitable companies.

[8] He commenced employment with CL Financial in 1976 as a sales agent and moved up the corporate ladder to become general manager of CL Financial. Following the establishment of CLICO Life, Mr. Parris was appointed as that company's first president and became its principal representative. He was subsequently appointed as the executive chairman of CLICO Holdings. In

that capacity as the executive chairman, Mr. Parris was fully responsible for CLICO Holding's operations throughout Barbados and the Eastern Caribbean.

[9] Mr. Parris was one of the first Barbadians employed in the field of insurance to qualify for the "Million Dollar Round Table Award", an international, independent association of the world's leading and exceptional life insurance and financial services professionals. He qualified for this accolade on ten consecutive occasions, which ultimately led to his appointment as a life member of the "Million Dollar Round Table".

[10] In May 2010, Mr. Parris retired from his position as executive chairman of CLICO Holdings after working in the CLICO group of companies over a period of 34 years.

[11] Mr. Parris is a director and shareholder in three companies incorporated under **Cap. 308** which have particular relevance in this matter. The first is Branlee Consulting, the second defendant/second appellant in this appeal. Mrs. Faye Wharton-Parris (Mrs. Parris), Mr. Parris' wife, is a director of that company along with Mr. Parris.

[12] The second company is Professional Services Inc., (Professional Services). Mr. Parris is the sole director and shareholder of that company which carried on the business of the provision of management services at No. 8 Dayrells Heights, St. Michael. It is that company which was employed by CLICO

Holdings to provide management services to CLICO Holdings subsidiaries, through the expertise of Mr. Parris, as its principal employee. Professional Services also owns four substantial pieces of real property. These are a residence at No. 8 Dayrells Heights, St. Michael valued at $3.5 million; property at No. 243 Crystal Heights, St. Michael valued at $1 million; Lots 403, 404 and 601 at Crystal Heights, St. Michael valued at $1.5 million; and Lot 7 Dayrells Heights, St. Michael valued at $450,000.00.

[13] The third company is High Rise Investment Co. Ltd (High Rise). Mr. Parris is the majority shareholder in, and a director of, this company. High Rise is a property owning company. It owns three lots at Sentinel Gardens, Barrack Hill, Christ Church worth in total $480,000.00 and a property at No. 15 Westmoreland, St. James valued at $2.2 million.

[14] Mr. Parris' investments with CLICO Life are also of some relevance in this matter. In this regard, Mr. Parris made investments in CLICO Life on five occasions between 1999 and 2004 in his name in respect of CLICO Life's Executive Flexible Premium Annuity Portfolio (Executive Portfolio). These investments totaled the sum of $3,157,386.00 and were due to mature in 2009 and 2010 respectively. Mr. Parris also invested the sum of $1,363,498.87 in the Executive Portfolio in the name of Branlee Consulting and the sum of $6 million in the name of Professional Services.

[15] Mr. Parris had other investments with CLICO Life by way of insurance policies on behalf of his two children.

[16] Mr. Parris' cash assets is also of great relevance in this case. Of these, Mr. Parris had at the relevant time the following cash in bank accounts, namely: Bank of Nova Scotia (BNS) A/C 1500030; $4.6 million; A/C 706595: $2.02 million; A/C 457950: $197,000.00; and a Central Bank of Barbados Deposit of $5 million.

[17] The third defendant/third appellant is "The Estate of David Thompson (acting through duly appointed Personal Representative Marie-Josephine Mara Thompson)", (Mr. Thompson). Mr. Thompson, deceased, was an attorney-at-law, and conducted his practice as the principal of the firm "Thompson & Associates". Mr. Thompson was the legal advisor to Mr. Parris, CLICO Life and CLICO Holdings in various transactions. He was also elected to the office of Prime Minister in January 2008. He is represented by his appointed personal representative, Marie-Josephine Mara Thompson.

CLICO Life under Judicial Management

Appointment of Judicial Manager

[18] CL Financial experienced a financial crisis in the year 2009, and the contagion effect was evident in the corporate collapse of its wider group of companies, including CLICO Life.

[19] On 14 April 2011, CLICO Life was placed under judicial management by an order made in the High Court. Deloitte Consulting Limited (the judicial manager), acting through Mr. Oliver Jordan (Mr. Jordan) and Mr. Patrick Toppin (Mr. Toppin), was appointed as its judicial manager. Subsequent to the grant of that order, Mr. Jordan resigned from Deloitte. Thereupon, pursuant to direction orders of the court dated 14 April 2011 and 29 April 2011, the judicial manager acting solely through Mr. Toppin, was vested with the management of the business of CLICO Life under the provisions of **Cap. 310**.

First Forensic Audit

[20] On 27 May 2011, in compliance with the direction orders of the High Court, the judicial manager filed an interim report regarding the operations of CLICO Life and duly presented his findings to the High Court. Further to this report, on 8 July 2011, the judicial manager filed an application in the High Court recommending that the services of the Forensic and Dispute Services Team of Deloitte & Touche LLP in Canada be retained to conduct a forensic audit of CLICO Life. According to the application, these services were required to assist the judicial manager in identifying, securing and reviewing the documentation available to support the intercompany balances and to identify related party transactions. The application of the judicial manager was

approved by the High Court on 20 September 2011, and a forensic audit of CLICO Life was conducted thereafter.

[21] A report of the forensic audit of CLICO Life as of 5 December 2011 (first forensic report) was submitted to the High Court. The "Executive summary" of that report stated, *inter alia*, the following:

> "Included in the balance owing by CHBL [CLICO Holdings] is a payment for $3.333mm made by CIL [CLICO Life] to the law firm of Thompson & Associates (legal advisors to CIL and CHBL) in January 2009, pursuant to an invoice dated December 2008 purportedly for fees or retainers related to various legal matters involving CHBL. Mr. Leroy Parris, the former Chairman of CIL and CHBL authorized the invoice for payment. We have been advised that although payment was made to Thompson & Associates, it was in fact to the benefit of Mr. Parris as partial payment of a "gratuity". We note that this transaction was not disclosed in the Minutes at that time but was discussed by the Board following the appointment to the Board of the Government representative in mid-2009."

[22] For completeness, it is to be noted that the authorisation for the payment of the "gratuity" mentioned in the foregoing extract was a letter dated 5 December 2002, addressed to Mr. Parris in his capacity of President of CLICO Holdings and signed by Mr. Duprey. This letter read in the relevant part as follows:

> "Dear Mr. Parris,
>
> You have made a verbal application to me to arrange some sort of lump sum reward for the work you have done in growing the asset base of CLICO Holdings (Barbados) Limited and transforming CLICO International Life Insurance Company Limited and CLICO International General Insurance Company Limited into profitable companies.

> I have considered your application and I will make the following financial arrangement for you. The commitment of C L Financial is conveyed in this letter and I have expressed my prerogative as Chairman to do so. CLICO Holdings (Barbados) Limited will pay you five million United States Dollars (US$5,000,000) in a tax effective form under the following conditions:
>
> 1. Lawrence A. Duprey ceases to be Group Chairman.
>
> 2. Leroy Parris ceases to be Chief Executive Officer of CLICO Holdings (Barbados) Limited.
>
> 3. We both are still active and hold our offices on December 31, 2010. Then this payment will be made to you in lump sum by January 31, 2011.
>
> Terms and conditions of this agreement are between Leroy Parris, CEO, CLICO Holdings (Barbados) Limited and Lawrence A. Duprey, Chairman, CL Financial Limited and CLICO Holdings (Barbados) Limited."

[23] An employment contract between CLICO Holdings and Professional Services dated 15 May 2005 is also relevant to the "gratuity". In that contract, CL Financial, acting by Mr. Duprey, agreed to the employment of Professional Services to provide such management services as the Group shall require over the term of 10 years from the commencement date of the contract. The contract was witnessed by Mr. Thompson, Gale B. Prescod and Onika E. Stewart, attorneys-at-law in Thompson & Associates.

[24] Part 4 Clause 11 of the contract entitled "Remuneration and other benefits" provided:

> "The employer shall pay to Professional Financial Services Inc. a basic annual salary of Three Hundred and Sixty Thousand dollars ($360,000.00) (or such increased basic rate as the parties

> from time to time agree) PROVIDED that such basic annual salary may be configured in a manner to be agreed that is tax efficient for the employer and Professional Financial Services Inc."

[25] Clause 14 of the contract under the same heading provided the following:

> "The employer will pay to Professional Financial Services Inc. and/or Leroy Parris a gratuity of US $5,000,000.00 on the 15th day of May 2008 in such manner as may be agreed between the parties on terms as set out but amended herein as to the date of payment but in no way otherwise than in a letter dated December 5, 2002 between Leroy Parris and Lawrence Duprey."

Second Forensic Audit

[26] The first forensic report recommended that additional investigative work be undertaken to further confirm intercompany assets and to investigate related party transactions. By order of 26 October 2012, the High Court approved the continuation of the forensic audit.

[27] On 21 June 2013, a second report of the forensic audit of CLICO Life was filed with the High Court pursuant to the order of 26 October 2012 (second forensic report).

[28] Under the heading "Executive summary", the second forensic report states, *inter alia*, as follows:

> "As part of our analysis, we also obtained additional information relating to the payment we previously identified of $3.333m apparently paid by CIL [CLICO Life] to the law firm of Thompson and Associates in January 2009. In summary, we found that:

- The Thompson and Associates invoice, purportedly for legal fees and retainers and used to make the payment by CIL was false. It was not an invoice issued by that law firm and was created solely to facilitate the payment and conceal its true nature, which was partial payment of a substantial gratuity to the benefit of Mr. Leroy Parris, the former Chairman of CIL and CHBL [CLICO Holdings].

- The timing of both the creation of the invoice on December 30, 2008 and the related cheque payment on January 16, 2009 corresponded with growing concerns regarding the financial status of CL Financial and related companies in Trinidad and Tobago, which culminated in the Central Bank of Trinidad and Tobago announcing on January 30, 2009 that it was providing financial support to the CL Financial group. In particular, we found that the submission of the invoice for processing and payment occurred after meetings between the Central Bank of Trinidad and Tobago and representatives of CL Financial regarding financial support."

Norwich Pharmacal Orders

[29] Based on the findings of the second forensic report, the judicial manager formed the view that the "false invoice" was created for the sole purpose of procuring monies from CLICO Life under false pretenses. Accordingly, the judicial manager, acting in pursuance of the directions orders of the High Court, which permitted the judicial manager "to commence actions as may be necessary to protect, recover or obtain assets/and or monies belonging or due to the company", initiated a tracing exercise to identify and locate the proceeds of the cheque paid to Thompson & Associates.

[30] The judicial manager filed an application in the High Court against First Caribbean International Bank (FCIB), the bank where the account in which Thompson & Associates deposited the cheque was held, seeking a *Norwich Pharmacal Order* requiring FCIB to provide a transaction history of Mr. Thompson's clients account and all relevant information relating to the deposit of the cheque paid by CLICO Life. The order granting the application was made by the High Court on 27 August 2013.

[31] FCIB produced the requested documentation to the judicial manager in September 2013. The documentation revealed that the cheque was deposited in an account entitled "David Thompson - Clients Account" on 16 January 2009. Thereafter, the following withdrawals were made from the David Thompson Clients Account:

- By way of a cheque dated 20 February 2009, made payable to Thompson & Associates, the sum of $1,052,777.10 was withdrawn;

- By way of a cheque dated 16 April 2009, made payable to Mafa Investments Inc., the sum of $140,000.00 was withdrawn;

- By way of a cheque dated 23 April 2009, made payable to Thompson & Associates, the sum of $2,833,000.00 was withdrawn.

Each cheque bore the signature of Mr. Thompson and the account of "Thompson & Associates" which was held at the Barbados National Bank Inc., now the Republic Bank (Barbados) Limited (RBBL).

[32] The judicial manager then filed an application against RBBL for a second *Norwich Pharmacal Order* requiring RBBL to provide a transaction history of the "Thompson & Associates" account and all relevant information relating to the sums deposited in that account during the period of February to October 2009. The order granting the application was made by the High Court on 18 October 2013.

[33] The transaction history produced by RBBL revealed that the cheque in the sum of $2,833,000.00 was deposited into the "Thompson & Associates" account. Shortly thereafter, the said sum was withdrawn by way of a cheque dated 27 April 2009 which was made payable to "Branlee Consulting Inc.", and was deposited into an account numbered 7000010 held at the Bank of Nova Scotia (BNS). In fact, that account was held in the name of "Branlee Consulting Services Inc.".

[34] This discrepancy between the name to which the cheque was made payable, and the name of the account in which the cheque was deposited, triggered a company search conducted by counsel for the judicial manager at the Corporate Affairs and Intellectual Property Office. The search revealed that

there was no company registered in the name of "Branlee Consulting Inc.", but rather, there was a company registered under the name of "Branlee Consulting Services Inc.".

[35] The judicial manager subsequently filed an application against the BNS for a third *Norwich Pharmacal Order* requiring the BNS to provide a transaction history of "Branlee Consulting Services Inc.'s" account and all relevant information relating to the sums deposited in that account during the period of April 2009 until 12 June 2014. The orders granting the application were made by the High Court on 5 March 2014 and 12 June 2014.

[36] The transaction history produced by BNS revealed that the cheque in the sum of $2,833,000.00 was deposited into the account of "Branlee Consulting" in May 2009. The Branlee Consulting account is a term deposit, the maturity date of which was May 2010. At the maturity date, after interest was applied, the account yielded a balance in the sum of $2,922,239.50.

[37] In May 2010, the sum of $2,922,239.50 was reinvested in another term deposit bearing the same account number, the maturity date of which was 5 May 2011. At the maturity date, after interest was applied, the account yielded a balance in the sum of $2,995,112.84.

[38] In May 2011, the sum of $2,995,112.84 was reinvested in another term deposit bearing the same account number, the maturity date of which was 7 May 2012.

At the maturity date, after interest was applied, the account yielded a balance in the sum of $3,074,380.76.

[39] On 8 May 2012, the sum of $3,074,380.76 was deposited into a separate account held at the BNS in the name of "Branlee Consulting Inc.", bearing account number 1500030. At the time of that deposit, the account in the name of Branlee Consulting Inc. had a balance in the sum of $744,658.93. It is worth mentioning therefore that there were two separate accounts held at the BNS in the names of Branlee Consulting Services Inc. and Branlee Consulting Inc. respectively, which were both operated by Mr. Parris and Mrs. Parris.

[40] During the month of May 2012, minor withdrawals were made from the account in the name of Branlee Consulting Inc. A deposit of $6,088,608.93 was also made on the said account on 23 May 2012, and at that date the balance on the account was in the sum of $9,905,572.01. It is to be observed that the transaction history from BNS bearing the names of the account holders was not exhibited by the judicial manager.

[41] On 29 May 2012, the sum of $9,905,572.01 was transferred to another account, numbered 1500161, held at the BNS in the name of "Leroy Parris". Following this transfer, the account numbered 1500030, held in the name of Branlee Consulting Inc., was closed.

[42] On the same day, 29 May 2012, the sum of $9,905,572.01 was disbursed into two drafts drawn in favour of "Leroy Parris". One draft was in the sum of $5,000,000.00 and the second draft was in the sum of $4,905,572.01. The drafts were also deposited on 29 May 2012, in an account numbered 1271188, held by Branlee Consulting Services at the RBC Royal Bank (Barbados) Limited (RBC).

[43] Thereafter, the judicial manager made a further application for a fourth *Norwich Pharmacal Order* against RBC requiring RBC to provide a transaction history of any accounts held in the name of "Branlee Consulting Services Inc." and "Leroy Parris" during the period of 29 May 2012 until 3 September 2014. The orders granting the application was made by the High Court on 3 September 2014.

[44] The transaction history produced by RBC revealed that three BNS cheques were deposited into an account numbered 1271188, held in the name of Branlee Consulting Services, in the sums of $5,600.00, $4,905,572.01 and $5,000,000.00. At that date, the account had a zero balance and thus, following the three deposits, the balance totaled $9,911,172.01. On 30 May 2012, the sum of $1,650.00 was deposited into that account increasing the balance thereon to $9,912,822.01.

[45] A withdrawal of $9,000,000.00 from the account numbered 1271188 proceeded from the previous transactions, and this sum was transferred into a term deposit account, numbered 1111364 held in the name of Branlee Consulting Services Inc. The maturity date of the term deposit was 31 May 2013.

Banks Terminate Relationship with Mr. Parris

[46] By letter dated 26 April 2013, RBC wrote to Mr. Parris advising him that the banking relationship between RBC and Mr. Parris would be terminated and the accounts he held with them closed. Mr. Hal Gollop QC, Mr. Vernon Smith QC and Mr. Michael Springer QC, acting on behalf of Mr. Parris and Mrs. Parris, wrote a letter to RBC dated 7 May 2013 demanding reasons for RBC's "sudden decision to close the accounts" and threatening to commence legal action against RBC.

[47] After much correspondence, including correspondence to RBC's Office of the Ombudsman in Toronto, Canada, and the continued refusal of RBC to withdraw its decision to terminate its banking relationship with Mr. Parris, Mr. Parris and Mrs. Parris sent a letter to RBC dated 3 June 2013 instructing RBC in relation to the closure of their accounts. More particularly, in relation to account numbered 1111364, they instructed that the sums thereon be paid out as follows: "One cashier's cheque in the sum of $4,500,000.00 made payable to Leroy

Parris; One cashier's cheque in the sum of $5,000,000.00 made payable to Leroy Parris; One cashier's cheque in the sum of the balance of the monies on the account to be made payable to Leroy Parris."

[48] BNS and FCIB also wrote to Mr. and Mrs. Parris indicating their intention to terminate their respective banking relationships. And, as in the RBC termination, counsel for Mr. Parris and Mrs. Parris demanded reasons for the termination and requested negotiations with respect to the intended closure of their clients' accounts. They also threatened BNS and FCIB with legal action. In fact, Professional Services commenced an action against FCIB in the High Court under Civil Suit No. 2070/2013 for breach of contract.

[49] Counsel for Mr. Parris and Mrs. Parris also wrote to the Governor of the Central Bank seeking intervention in the closure of their clients' accounts "without reason". A reply was tendered on behalf of the Governor expressing that the Central Bank lacked statutory jurisdiction to intervene in the matter.

The $4,500,000.00 Account at BNS

[50] On 3 June 2013, RBC issued the cheques in accordance with the instructions of Mr. Parris. The cashier's cheque in the sum of $4,500,000.00 was deposited in the account held at BNS in the name of Leroy Parris and the cashier's cheque in the sum of $5,000,000.00 was deposited into the account held at the Central Bank in the name of Leroy Parris.

[51] By letter dated 22 December 2014, counsel for the judicial manager wrote to BNS pursuant to an order of the High Court to obtain the transaction history of the cheque in the sum of $4,500,000.00 deposited into the account of Leroy Parris held at that bank.

[52] By letter dated 30 December 2014, BNS confirmed that a deposit in the amount of $4,500,000.00 was made on 3 June 2013 to a term deposit account in the name of Leroy Parris. That deposit was then transferred from the account in the name of Leroy Parris to an account in the name of "Branlee Consulting" on 6 June 2013. It is noted that the customer name on account in the enclosed attachments relating to the relevant account information was Branlee Consulting Services Inc. Therefore, all of the references in the BNS letter of 30 December 2014 to Branlee Consulting referred to Branlee Consulting Services Inc.

[53] The term deposit whose date of maturity was 6 June 2014, was renewed thereafter for a period of one year, and the new maturity date was 8 June 2015.

THE ACTION BEFORE THE HIGH COURT

The Application before Chandler J

[54] Based on the findings of the forensic auditors and the tracing exercises conducted by the judicial manager, the judicial manager formed the opinion that the sum of monies paid by CLICO Life to Thompson & Associates were

falsely procured by Mr. Parris, in breach of his fiduciary duties, and would likely be dissipated upon the maturity of the $4,500,000.00 in the term deposit account held at BNS. Accordingly, by an application made without notice dated 20 January 2015, CLICO Life sought an order from the High Court pursuant to ***CPR 17.1(1) (e)***, before a claim had been made, that "the Defendant be restrained from disposing of or otherwise dealing with its assets up to a maximum sum of BDS $3,300,000.00". The application was supported by an affidavit deposed to by Mr. Toppin. A draft order was also attached to the application.

[55] The application was heard before **Chandler J** on 27 January 2015. After hearing Mr. Ramon O. Alleyne, Ms. Shena-Ann Ince and Mr. Michael J. Koeiman of Messrs. Clarke Gittens Farmer, CLICO Life's attorneys-at law, **Chandler J** made the following order:

> "**FREEZING INJUNCTION**
>
> 5. Until the return date or further order of the court the First Defendant and the Second Defendant whether by their directors, officers, servants, agents or any trustee must not:
>
> i) Remove from Barbados any of his, its or their assets which are in Barbados whether in his its or their name or not and whether solely or jointly owned up to the realisable value of **BDS $4,500,000.00** and/or

ii) In any way dispose or deal with or diminish the value of any of his assets whether they are in or outside of Barbados whether in his its or their own name or not and whether solely or jointly owned up to the same realisable value.

6. Paragraph 5 above applies to all [sic] the First Defendant's and or the Second Defendant's assets whether or not they are in the name of the First Defendant and /or the Second Defendant whether they are solely or jointly owned. For the purpose of this Order the First Defendant's or the Second Defendant's assets include any asset he it or they has/have the power, directly or indirectly to dispose of or deal with as if it were his its or their own. The First Defendant and or the Second Defendant is to be regarded as having such power if a third party holds or controls the asset in accordance with his its or their direct or indirect instructions.

7. The prohibition at 5 above included in particular the Term Deposit account #12203742 held at the Bank of Nova Scotia

8. If the total unencumbered value of the First Defendant's assets in Barbados exceeds **BDS $4,500,000.00**, the First Defendant may remove any of those assets from Barbados or may dispose of or deal with them so long as the total unencumbered value of the First Defendant's assets in Barbados remains above **BDS $4,500,000.00**.

9. If the total unencumbered value of the Second Defendant's assets in Barbados exceeds **BDS $4,500,000.00**, the Second Defendant may remove any of those assets from Barbados or may dispose of or deal with them so long as the total unencumbered value of the Second Defendant's assets in Barbados remains above **BDS $4,500,000.00**."

[56] Subsequent to the hearing of the oral without notice application on 29 January 2015, CLICO Life filed the notice of application along with the supporting

affidavit of Mr. Toppin and the draft order. On that same date, CLICO Life filed a claim form in High Court Civil Suit 99/2015 commencing legal proceedings against Mr. Parris, Branlee Consulting and the estate of David Thompson (acting through duly appointed Personal Representative Marie-Josephine Mara Thompson).

[57] In its claim form, CLICO Life claimed the following:

> "(1) Against the First Defendant:
>
> i) A Declaration that the First Defendant is liable to account to the Claimant for the sum of 3,333,000.00 (sic) and/or such further or other sum as the Court thinks fit on the ground of his breach of fiduciary duty/trust owed to the Claimant.
>
> ii) An Order that the First Defendant pay to the Claimant the said sum of $3,333,000.00 or such other sum as the Court thinks fit.
>
> (2) Against the Second Defendant:
>
> i) A Declaration that the Second Defendant is liable to account to the Claimant for the sum of $2,833,000.00 and/or such further or other sum as the Court thinks fit on the ground of knowing receipt and/or knowing assistance in the First Defendant's breach of trust.
>
> ii) An Order that the Second Defendant pay to the Claimant the said sum of $2,833,000.00 or such other sum as the Court thinks fit.

(3) Against the Third Defendant:

i) A Declaration that the Third Defendant is liable to account to the Claimant for the sum of $3,333,000.00 and/or such further or other sum as the Court thinks fit on the ground of the Deceased's knowing receipt and/or knowing assistance in the First Defendant's breach of trust.

ii) An Order that the Third Defendant pay to the Claimant the said sum of $3,333,000.00 or such other sum as the Court thinks fit.

(4) Interest pursuant to section 35 of the Supreme Court of Judicature Act Cap. 117A of the Laws of Barbados;

(5) Costs; and

(6) Such further or other relief as this Honourable Court may deem fit."

The Applications before Gibson CJ

[58] By notice of application filed 11 February 2015, Mr. Parris and Branlee Consulting applied to the High Court seeking an order to discharge or vary the freezing injunction granted by **Chandler J**. An affidavit deposed to by Mr. Parris was filed in support of the application.

[59] Nine days later, by a separate application filed 20 February 2015, the estate of David Thompson sought an order for summary judgment against the CLICO Life on the whole of CLICO Life's claim against the estate of David Thompson, or, alternatively an order striking out CLICO Life's claim against

it. An affidavit, deposed to by Marie-Josephine Mara Thompson, was filed in support of the application. A detail which assumes some importance in CLICO Life's cross-appeal and which we are of the view should be noted here parenthetically is that this application was fixed for hearing on 4 May 2016, the same date on which an application by CLICO Life for summary judgment against the estate of David Thompson had also been set down.

Decision of Gibson CJ

[60] The application of Mr. Parris and Branlee Consulting was heard by **Gibson CJ** on 10, 14, 17 and 21 April 2015. **Gibson CJ** heard the matter after **Chandler J** recused himself on 16 February 2015.

[61] On 22 February 2016, **Gibson CJ** delivered a written decision in which he made the following orders at **paras [108]** and **[109]** of his judgment:

> "a) The application of the first and second defendants to discharge the freezing order granted by **Chandler J** is dismissed, with costs;
>
> b) The application of the third defendant to strike out the case as filed against it is granted; and
>
> c) The Bank of Nova Scotia is directed, until the further order of the Court, to maintain the $4,500,000.00 in Term Deposit No.12203742 held in the name of Branlee Consulting Services Inc.
>
> [109] Costs to the Claimant and the Third Defendant against the First and Second Defendants, to be agreed or assessed."

[62] It is important to note here that Order (b) at **para [108]** was made without argument from any of the parties to the application on which the order was made. It is also worth noting that the application by the third defendant was against the claimant and not the first and second defendants.

THE APPEAL

The Notice of Appeal and Cross-Appeal

[63] On 15 March 2016, Mr. Parris and Branlee Consulting filed their notice of appeal titled Civil Appeal No. 8 of 2016 against the decision of **Gibson CJ**. The appellants subsequently filed amended notices of appeal on 22 April 2016 and 22 June 2016 respectively in which they sought orders discharging the freezing order of **Chandler J** on 29 January 2015, upheld by **Gibson CJ** on 22 February 2016, and reversing the decision of **Gibson CJ** to award costs to the claimant and the third defendant in the matter.

[64] Meanwhile, on 5 April 2016, CLICO Life filed a notice of cross-appeal against the decision of **Gibson CJ** contained in his judgment of 22 February 2016 in which he ordered the striking out of the action of the third defendant. In its cross-appeal, CLICO Life is seeking an order "reinstating the action as against the Third Defendant and directing that the matter be set down for a Case Management Conference".

COURT'S ANALYSIS AND CONCLUSIONS

Issues in this Appeal

[65] Based on the pleadings in this appeal, cross-appeal and the written and oral submissions before this Court, two major issues are raised in this appeal for our determination. The first issue is whether there was a proper exercise by **Gibson CJ** of his discretion in refusing to discharge the freezing order granted by **Chandler J**. The second issue is whether the estate of David Thompson ought to have been struck out as a party to the action before **Gibson CJ**. A third subsidiary issue is also raised in respect of **Gibson CJ**'s costs order.

[66] We deal with these issues hereafter *seriatim*.

The Freezing Order

This Court's Function in Appeal against Freezing Order

[67] In the English House of Lords case of **Fourie v Le Roux and others [2007] UKHL 1** at **para 25** (**Fourie**), Lord Scott observed that the original power of common law courts to grant injunctive relief is derived from that of the Chancery courts of England. In Barbados, this power has been given statutory force in **section 44 (b)** of **the Supreme Court of Judicature Act, Cap 117A (Cap 117A)**. That subsection provides that the High Court may "at any stage of any proceedings… grant a mandatory or other injunction…where it appears to the Court just or convenient to do so".

[68] In the High Court decision of **Coney Island**, **Sir Denys Williams CJ (ag.)** held that the injunctive power in **section 44 (b)** included a jurisdiction to grant freezing injunctions or **Mareva** injunctions, as they are variously called. Subsequent to **Coney Island**, ***CPR 17.1(1) (e)*** was promulgated expressly providing that: "The court may grant interim remedies including an order, referred to as a 'freezing order' or as an injunction in the nature of a 'Mareva injunction' (i) restraining a party from removing from the jurisdiction assets located there; (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not." In our judgment, ***CPR 17.1(1)(e)*** is an unmistakable validation of **Sir Denys Williams CJ (ag.)'s** interpretation in **Coney Island** that a **Mareva** injunctive power is embraced by **section 44 (b)** of **Cap. 117A**.

[69] In both **section 44 (b)** of **Cap. 117A** and ***CPR 17.1(1) (e)*** the express language is that the High Court "may" grant injunctive relief. It is manifest from the use of that word that the power in the High Court judge to grant or discharge a **Mareva** injunction is a discretionary power: see **section 37** of **Interpretation Act, Cap. 1**. As such, it is imperative that this Court, in considering whether to interfere with the exercise of his discretion by the trial judge in this case, begin by reminding itself of the appellate function in a case involving the exercise of a discretionary power by a trial judge.

[70] In its recent decision of **Consumer Guarantee Insurance Co. Ltd. v Trident Insurance Company Ltd. Civil Appeal No. 9 of 2014 (Consumer Guarantee)**, this Court accepted the statement of law by Lord Woolf on the appellate function in respect of the exercise of a discretion by a trial judge in the English Court of Appeal decision of **Phonographic Performance Ltd v AEI Rediffusion Music Ltd [1999] 1 WLR 1507, 1523-D**. There, Lord Woolf stated as follows:

> "Before the Court can interfere it must be shown that the judge has either erred in principle in his approach or has left out of account or has taken into account some feature that he should, or should not, have considered, or that his decision was wholly wrong because the Court is forced to the conclusion that he has not balanced the various factors fairly in the scale."

[71] In **Consumer Guarantee** also, this Court noted that the Trinidad and Tobago Court of Appeal had also embraced that statement of the law in **Jetpak Services Ltd v BWIA International Airways Ltd (1998) 55 WIR 362**. There, de la Bastide CJ stated at **p. 368**:

> "It is only in the circumstances where the exercise of the judge's discretion is based on a misunderstanding or misapplication of either the law or the evidence that an appellate court is entitled to set aside the exercise of the judge's discretion and exercise an independent discretion of its own."

[72] Accordingly, in determining whether this Court should interfere with the exercise by **Gibson CJ** of his **section 44 (b)** of **Cap. 117A** and ***CPR 17.1(1)(e)*** discretion, the question which we must address is whether the Chief Justice

acted on a misunderstanding or misapplication of either the law or the evidence in the exercise of his discretion in refusing to discharge the **Mareva** injunction.

[73] With this standard for interference firmly in mind, we turn to consideration of **Gibson CJ**'s exercise of his discretion. We look first of all at whether the Chief Justice acted upon the correct principles of law which govern the grant or discharge of the **Mareva** injunction. We then look at his application of these principles to the facts of the case before him.

Whether Gibson CJ acted upon the correct principles of law

[74] In approaching this question, it is important to recall that **Coney Island** and ***CPR 17.1(1) (e)*** put it beyond the pale of argument that our High Court has jurisdiction to grant **Mareva** remedy. It is to be stressed, however, that simply because that court has that jurisdiction does not mean that it should grant it without more. As Lord Scott said in **Fourie**, quoting from **Guaranty Trust Co. of New York v. Hannay & Co.**, **[1915] 2 KB 536**, at **p. 563**, a court "will not according to its settled practice do so except in a certain way and under certain circumstances". See also **Cartier International AG v. British Sky Broadcasting Ltd**., **2014 EWHC 3354 (Ch.)**. The burning question, therefore, becomes: what is this "certain way" and what are these "certain

circumstances?" Or, put another way, what are the general principles of law which should govern the exercise by the court of its **Mareva** jurisdiction?

[75] Lord Bingham's explication of **Mareva** injunctions in **Fourie** affords a useful stepping stone to answering that question. There, Lord Bingham stated as follows at **para 2**:

> "Mareva (or freezing) injunctions were from the beginning, and continue to be, granted for an important but limited purpose: to prevent a defendant dissipating his assets with the intention or effect of frustrating enforcement of a prospective judgment. They are not a proprietary remedy. They are not granted to give a claimant advance security for his claim, although they may have that effect. They are not an end in themselves. They are a supplementary remedy, granted to protect the efficacy of court proceedings, domestic or foreign: see Steven Gee, *Commercial Injunctions,* 5th ed (2004), pp 77 – 83."

[76] In our judgment, Lord Bingham's exposition is to be understood within the framework of the fundamental juridical nature of the **Mareva** injunction, which is that, like other injunctions, it is an equitable remedy. Because of its equitable character, the overarching consideration in deciding whether a **Mareva** injunction should be granted or discharged is whether granting or discharging it is just and equitable in all the circumstances of the case. This is why Professor Spry could write in his renowned text *The Principles of Equitable Remedies 5th ed*., at *527 (Spry on Equitable Remedies)*:

> "It is not appropriate…to endeavour to set out exclusive categories of the considerations that are properly taken into account on applications in regard to Mareva injunctions. The

> court is required to consider all matters that bear upon the justice of granting or withholding the remedy in the particular circumstances…"

To gild the lily, we would quickly note here that this view of the law was recently affirmed by Abella J in the Supreme Court of Canada case of **Google Inc. v Equustek Solutions Inc. [2017] SCC 63** at **para 25**.

[77] Notwithstanding that there are no rigid rules governing the grant or discharge of **Mareva** injunctions, Lord Bingham's statement implies that there are two important general matters which should be taken into consideration in determining whether a court should exercise its discretionary power to grant **Mareva** injunctions. We consider it important that we fully spell out these two matters.

[78] The first general matter derives from the proposition that **Mareva** injunctions "are a supplementary remedy, granted to protect the efficacy of court proceedings". This assertion implies that the underlying claim which a **Mareva** injunction is intended to support must as a general rule be efficacious to begin with. This means that, before the question of granting a **Mareva** injunction can arise in the first place, the claimant's case must reach a certain viability threshold. The threshold identified in the case law is that the claimant must have "a good arguable case" in the sense of being, as adumbrated by Mustill J **Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH &**

Co KG, The Neidersachsen [1984] 1 All ER 398 at **p. 403**, "one which is more than barely capable of serious argument, but not necessarily one which the judge considers would have better than an 50 percent chance of success".

[79] We would pause here to note an important gloss on the "good arguable case" threshold requirement. It is that, as Lord Bingham stressed in the above quoted passage in **Fourie**, the **Mareva** injunction is inapplicable where the underlying claim is for a proprietary remedy. As Buckley LJ explained in the English Court of Appeal case of **Cretanor Maritime Co. Ltd. v Irish Marine Management Ltd. [1978] 1 WLR 966** at **p.974** " a *Mareva* injunction…even if it relates only to a particularised asset…is relief *in personam*". The import of this is that the "good arguable case" shown by a claimant must be in respect of an underlying claim for *in personam* relief; and not for proprietary relief.

[80] The second general matter to be considered in the grant or discharge of **Mareva** injunctions emerges from Lord Bingham's proviso in **Fourie** that **Mareva** injunctions "are granted for an important but limited purpose: to prevent a defendant dissipating his assets with the intention or effect of frustrating enforcement of a prospective judgment." This proviso is at the bottom of the flood of judicial authority which insists that dissipation or the fear of dissipation is one of the most important matters bearing upon the justice of granting or discharging a **Mareva** injunction. This authority also insists that

dissipation or risk of dissipation must be based on facts disclosed on persuasive affidavit evidence. Thus, in the England and Wales High Court decision of **JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2014] EWHC 4336 (Ch) at [221]**, Mann J explained the approach of the court to evidence of dissipation as follows:

> "What one has to do is to acknowledge the seriousness of the consequences of a freezing order; and the invasion of liberty that it involves (especially bearing in mind it is usually sought in a without notice application) and to reflect that in requiring proof to an appropriately high standard. Orders are not to be lightly sought and will not be granted on flimsy evidence."

[81] "Good arguable case" and "dissipation or risk of dissipation" are no doubt fundamental considerations in approaching the question whether or not to grant or discharge a **Mareva** injunction. Be that as it may, as was pointed out above, ultimately, the overarching consideration in the grant or refusal of such an injunction is whether it is just and equitable in all the circumstances of the case so to do. In our view, it is in this context that Lord Denning in the English Court of Appeal case of **Third Chandris Shipping Corp v Unimarine [1979] 2 All ER 972, 984-5** identified as relevant considerations in particular circumstances the duty on a claimant in an *ex parte* application to fairly and fully state the points made against his claim by the defendant and the requirement that a claimant give an undertaking in damages, in case the claim turns out to be unjustified.

[82] In the case before us, as noted at para [54] above, CLICO Life, in its without notice application, sought an order from the High Court pursuant to ***CPR 17.1(1)(e)*** that "the Defendant" be restrained from disposing of or otherwise dealing with its assets up to a maximum sum of BDS $3,300,000.00. Therefore, CLICO was unmistakably seeking to invoke the exercise by the High Court of its **Mareva** jurisdiction. That being so, Mr. Gollop QC argued, the foregoing principles are the principles which should have guided **Gibson CJ** in approaching the question of whether or not the **Mareva** injunction should have been discharged in this case.

[83] Mr. Gollop QC maintained that **Gibson CJ** did not apply those principles. Instead, Mr. Gollop QC contended, **Gibson CJ** invoked the "**Toojays Ltd v Westhaven-American Cyanamid v Ethicon**" principles and in so doing fell into fundamental error. In making this argument, counsel pointed us, *inter alia*, to **para [97]** of the judgment of **Gibson CJ** which reads:

> "In my judgment, while the grant of the injunction was based on **Mareva**, I would have preferred the **Toojays Ltd v Westhaven-American Cyanamid v Ethicon** "proprietary" or "interlocutory" injunction where the two requirements are (1) a serious issue to be tried; and (2) where does the balance of justice lie or, more poignantly, where does the risk of injustice lie. Applying **Toojays** to this application seeking the discharge of an injunction, the balance of justice must lead in favour of dismissing the application and retaining the injunction in place."

[84] Admittedly, there is some equivocality in that statement as to whether the Chief Justice was applying the **Toojays** principles in dismissing the application for the discharge of the **Mareva** injunction granted by **Chandler J**. Indeed, it is undeniable that the judgment of **Gibson CJ** does not always make it clear what are the general principles he is applying in approaching the appellants' application for the discharge of the **Mareva** injunction.

[85] All of that notwithstanding, we are satisfied that **Gibson CJ**'s discussion of **Toojays** was by way of obiter and that, in the end, **Gibson CJ** used the appropriate general principles in approaching the question of the discharge of the **Mareva** injunction. He recognised, at **para [67]**, the requirement for the claimant to have a good arguable case; at **para [68]**, the requirement that the claimant must show that there is a palpable risk of the defendants dissipating their assets prior to the claimant obtaining judgment; at **paras [81]** and **[82]**, the claimant's duty to fairly state the points made against his claim by the defendant; and, at **para [83]**, the requirement that the claimant give an undertaking in damages. Accordingly, we do not agree with Mr. Gollop QC that the Chief Justice applied wrong principles in approaching the question of the discharge of the **Mareva** injunction.

Whether Gibson CJ erred in his application of the Mareva principles

[86] This means that we must now confront Mr. Gollop QC's alternative argument, namely, that **Gibson CJ** misapplied the **Mareva** principles to the case before him. In doing so, we must consider (i) whether CLICO Life established a good arguable case; (ii) whether CLICO Life evinced evidence of dissipation; and (iii) whether there were any overarching equitable considerations not properly taken into account by **Gibson CJ**.

[87] We turn to addressing these questions.

Did CLICO Life establish a good arguable case?

[88] CLICO Life's essential case against the first appellant is that he, as a director of CLICO Life, "in breach of fiduciary duty/and or in breach of trust" "procured the issuance of a cheque… in the sum of $3,333,000.00" belonging to CLICO Life for which he is liable to account. The case against the second appellant is that Branlee Consulting is liable to account for the sum of $2,833,000.00 "on the ground of knowing receipt/knowing assistance" in Mr. Parris' "breach of trust". A foundation stone of CLICO Life's case, therefore, is that CLICO Life was the owner of the $3,333,000.00.

[89] As regards CLICO Life's claim against Mr. Parris, to satisfy the requirement of showing a good arguable case, the affidavit material of CLICO Life must be sufficient to show an arguable case, either that Mr. Parris did not act *bona fide*

in what he considered the best interests of CLICO in procuring the issuance of the cheque in the sum of $3,333,000.00, or that he failed to consider whether such issuance was in fact in the best interests of CLICO. CLICO Life's affidavit must establish this because **section 95 (1) (a)** of **Cap. 308** imposes a statutory fiduciary duty on directors of companies in Barbados. That was decided by the Supreme Court of Canada in **Peoples Department Stores Inc. (Trustees of) v Wise [2004] SCR 461** at **para [32]**, interpreting a provision in *Canadian Business Corporations Act, RSC 1985, c 44* (as amended) which is *in pari materia* with **section 95 (1) (a)** of **Cap. 308**. According to Andrew Burgess, *Commonwealth Caribbean Company Law (Rutledge, 2013)* at *p.236*, this statutory fiduciary duty means "that directors are under a subjective duty to act *bona fide* in what they consider, and not what the court may consider, is in the best interests of the company". Furthermore, according to this text, citing in support the English Chancery Division decision in **Re W & M Roith Ltd. [1967] 1 All ER 427**, "if a director fails to consider whether a transaction is in fact in the best interests of the company, he is in breach of his section 95 (1)(a) duty".

[90] In our view, the affidavit material was sufficient to establish a good arguable case against Mr. Parris for the purposes of the grant of **Mareva** remedy. There was evidence that Mr. Parris was a director of CLICO Life, that he authorised

the issuance of the cheque for $3,333,000.00 drawn on CLICO Life's account, and that, in so doing, he acted in his own interest and not the best interests of CLICO Life. We hasten to add, though, that in making this determination, we are not suggesting in any way that the affidavit evidence is sufficient to establish a breach by Mr. Parris of his statutory fiduciary duty. In our judgment, before any such conclusion could be reached, there would have to be, among other things, an evaluation of Mr. Parris' claim that the $3,333,000.00 was a gratuity payment due to him and not a sum belonging to CLICO Life.

[91] Whether there is a good arguable case against Branlee Consulting turns upon different considerations from those applicable to Mr. Parris. To satisfy the requirement for an arguable case against Branlee Consulting, the affidavit evidence must show an arguable case that Branlee Consulting either knowingly received the sum of $2,833,000.00 as a result of Mr. Parris' breach of his fiduciary duty, or that Branlee Consulting knowingly assisted in such a breach.

[92] In our view, the affidavit evidence is sufficient to ground a conclusion that there was an arguable case of Branlee Consulting's knowing receipt and/or knowing assistance. The affidavit evidence was that the sum of $2,833,000.00 was paid into Branlee Consulting's account by Mr. Parris. This may not be

enough by itself to make a case of knowing receipt and/or knowing assistance, but in our view, it is sufficient to satisfy the requirement of an arguable case.

[93] In light of the foregoing, we hold that **Gibson CJ** was correct in finding that CLICO Life had shown an arguable case against both Mr. Parris and Branlee Consulting.

[94] Given that finding, we must turn to Mr. Gollop QC's argument that, even though there might be sufficient evidence to constitute an arguable case against Mr. Parris and/or Branlee Consulting, CLICO's claim for **Mareva** remedy must still fail because, as was stated by Lord Bingham in the passage cited at para [75] of this judgment, a **Mareva** injunction is not a proprietary remedy; it is a claim for *in personam* relief. Mr. Gollop QC's argument continues that, in its claim form, CLICO Life asserted a proprietary right to the assets sought to be frozen pending the determination of ownership at trial and denied Mr. Parris' and Branlee Consulting's ownership of those assets. As its underlying claim was a proprietary claim, Mr. Gollop QC's argument concludes, CLICO Life was not entitled to the exercise of the **section 44 (b)** of **Cap 117A Mareva** jurisdiction.

[95] In our judgment, the persuasion of Mr. Gollop QC's argument is severely undermined by CLICO Life's pleadings. In its claim form, CLICO claimed (i) a declaration that Mr. Parris is liable to account to CLICO for the sum of

$3,333,000.00; and (ii) a declaration that Branlee Consulting is liable to account to CLICO for the sum of $2,833,000.00. Admittedly, then, CLICO's claim against Mr. Parris and Branlee Consulting is for particularised sums. However, it is clear from CLICO's pleadings that its claim against them was a personal action in equity for an account by them as fiduciaries. CLICO's underlying claim was therefore not a proprietary claim, but an *in personam* claim.

[96] Of course, CLICO Life might have brought a proprietary action alleging that what it claims to be its property, the sum of $3,333,000.00, was vested in Mr. Parris or in Branlee Consulting and asserting tracing rights against that property. That would have been a proprietary claim and Mr. Gollop QC's argument would have been persuasive. However, as CLICO Life's pleadings stand, its action against Mr. Parris or Branlee Consulting is a personal action in equity and Mr. Gollop QC's argument that CLICO Life is not entitled to the exercise of the **section 44 (b)** of **Cap 117A Mareva** jurisdiction because its underlying claim is a proprietary claim must fail.

Whether there was evidence of dissipation or risk of dissipation

[97] As has already been seen, to invoke the court's **Mareva** jurisdiction, a claimant must persuade the court by its materials that the defendant is disposing of or dissipating, or that there is a risk of him disposing of or dissipating, his assets

to avoid the enforcement of a prospective judgment against him. In this regard, at **para [69]** of his judgment, **Gibson CJ** appears to have found such persuasion in CLICO's contention that "dishonesty was a factor tending to support the conclusion that there was a risk of dissipation". Pursuing this contention, between **paras [68]** and **[78]** of his judgment, **Gibson CJ** cited a number of Commonwealth decisions which seem to support the view that evidence of dishonesty involving misuse of assets, coupled with a failure on the part of a defendant to explain what has happened to such assets, may enable the court to draw the inference that there is sufficient evidence of dissipation.

[98] Interestingly, **Gibson CJ**, at **para [73]** of his judgment, referred "to the warning sounded by Peter Gibson LJ in **Thane Investments Ltd v Tomlinson [2003] EWCA Civ 1272** against the tendency to infer dissipation or risk of dissipation from the fact that allegations of dishonesty are made against a defendant". In that case, Peter Gibson LJ said:

> "It is appropriate in each case for the court to scrutinize with care whether what is alleged to have been the dishonesty of the person against whom the order is sought in itself really justifies the inference that that person has assets which he is likely to dissipate unless restricted."

In the same vein, at **para [74]** of his judgment, **Gibson CJ** cited the following passage from Patten J in the English Chancery Court decision in **Jarvis Field Press Ltd v Chelton and Others [2003] EWHC 2674** at :

> "I have no difficulty in accepting the general principle, emphasized by Peter Gibson LJ, that a mere unfocused finding of dishonesty is not, in itself, sufficient to ground an application for a freezing order. It is necessary to have regard to the particular respondents to the application and to ask oneself whether, in the light of the dishonest conduct which is asserted against them, there is a real risk of dissipation. As Peter Gibson LJ made clear…the court has to scrutinize with care whether what is alleged to have been dishonesty justifies the inference."

[99] Despite citing the caution in these cases of the need for the court to scrutinize with care whether what is alleged to have been dishonesty justifies the inference of dissipation or risk of dissipation, we regret that, as it appears to us, the Chief Justice did not heed that caution. Thus, at **para [79]** of his judgment, the Chief Justice held that the following considerations were enough to establish dissipation or risk of dissipation, namely: (i) that Mr. Parris had "never addressed the issue of a false invoice which was prepared as a request for legal fees and which was clearly designed to procure funds from the claimant by artifice"; (ii) that Mr. Parris had "not denied knowledge of the fact that the invoice was false or that no such services had been performed for the benefit of [CLICO] or CHBL": (iii) "[Mr. Parris'] receipt of the funds and subsequent moving of the funds through various bank accounts"; (iv) "[Mr. Parris'] continued simple assertion that the moneys were paid to him in performance of a contract with CHBL to pay him a gratuity; (v) "the request by both [Mr. Parris] and [Branlee Consulting] for access to this $3.33 million

while, [Mr. Parris] simultaneously states, in his affidavit opposing the risk of dissipation, that the defendants have access to more than $11 million in cash assets".

[100] It appears to us that the reason for the Chief Justice relying on these "considerations" as constituting sufficient evidence of dissipation or risk of dissipation is the fundamentally erroneous assumption that CLICO Life's underlying claim was a proprietary claim for the $3.333 million paid under "a false invoice" to Thompson & Associates and ultimately to Mr. Parris. In fact, as has been seen, CLICO Life's underlying claim was for the personal remedy of an account by Mr. Parris and Branlee Consulting. CLICO Life's claim was therefore not against any specific asset of Mr. Parris and Branlee Consulting; it was against all their assets.

[101] In our judgment, once it is recognised that CLICO Life's underlying claim was for Mr. Parris' and Branlee Consulting's personal liability to account, and not a claim against any specific asset, the evidence found by **Gibson CJ** in support of dissipation or risk of dissipation falls away rapidly for at least four good reasons. The first is that the assets of Mr. Parris and Branlee Consulting, which we dare say include real property, are worth in excess of $11 million, far in excess of the $3.333 million claimed by CLICO. In our view, the nature and amount of those assets would necessitate a major divestment project by

Mr. Parris and Branlee Consulting, of which there is no evidence, to avoid a judgment for $3.333 million which might be given against them. In particular, we note that there is no evidence of Mr. Parris and/or Branlee Consulting divesting or attempting to divest themselves of their real property holdings.

[102] The second is that the undisputed evidence is that Mr. Parris and Branlee Consulting, far from attempting to dispose of or dissipate their cash assets, made every effort to ensure that their cash assets were deposited in reputable banking institutions in Barbados. Further, the evidence is that Mr. Parris and Branlee Consulting deployed substantial legal effort to forestall the termination by RBC, CIBC and BNS of their banking relationship with these banks. Indeed, when these efforts failed, Mr. Parris sought and obtained permission to deposit $5 million with the Central Bank of Barbados.

[103] The third is that, what the Chief Justice refers to as "[Mr. Parris's] receipt of the funds and subsequent moving of the funds through various bank accounts" seems to be a mischaracterisation of the facts disclosed pursuant to the third and fourth *Norwich Pharmacal* orders. It appears to us that what that evidence shows is that Mr. Parris did nothing more than set up in successive years one year term deposit accounts with a view, no doubt, to maximizing his returns on these deposits. There is absolutely no suggestion in this evidence that these accounts involved any shenanigans by Mr. Parris intended to hide his cash

assets. Mr. Parris' background in finance would surely have indicated to him that setting up successive one year term deposits in reputable banks was no way to hide his cash assets.

[104] The fourth and final is that we find it difficult to see how the Chief Justice's findings that Mr. Parris "never addressed the issue of his approval of a false invoice" and that he had "not denied knowledge of the fact that the invoice was false" amounted to evidence pointing to dissipation or risk of dissipation of his assets. In our view, even if the Chief Justice saw this as evidence of Mr. Parris' dishonesty, that evidence could not reasonably justify an inference of dissipation or risk of dissipation, especially as CLICO Life's underlying claim was ultimately against all the assets of Mr. Parris and Branlee Consulting.

Whether CLICO breached its duty to disclose

[105] As Lord Denning MR pointed out in the **Third Chandris,** a claimant in an *ex parte* application for a **Mareva** injunction is under a duty to fully and fairly state the points made against his claim by the defendant. In this case, the evidence is that Professional Financial Services brought a claim in "Claim No. CVO 338/2011- Professional Financial Services Ltd against CLICO Holdings (Barbados) Ltd" to recover the sum of $6,546,123.32 which it alleged was owed to it by CLICO under a contract between it and CLICO. In the affidavit of Mr. Patrick Toppin in support of CLICO's application, CLICO disclosed

that suit and fairly stated the points made in that suit against CLICO's claim against Mr. Parris and Branlee Consulting.

[106] The evidence also was that Mr. Parris instituted a law suit: "Claim No. CVO 337/2011-Leroy Parris against CLICO Holdings (Barbados) Ltd" in which Mr. Parris claims damages in the sum of $3,656,133.79 pursuant to three investments he made with CLICO Life under "Flexible Annuity" policies. The further evidence was that Mr. Parris alleged, and this was confirmed by Mr. Toppin in his affidavit of 16 February 2015 at paragraphs 29 to 31, that CLICO Life was indebted to Mr. Parris' and Branlee Consulting in sums exceeding $5 million and that Mr. Parris had purchased life insurance policies from CLICO Life for his children. CLICO Life did not disclose any of this in Mr. Toppin's affidavit in support of its application for **Mareva** relief.

[107] At **para [82]** of his judgment, **Gibson CJ** held that: "Whilst these are interesting disclosures, the Court does not find that they are material to the application at hand". With utmost respect, we do not agree with this finding of the Chief Justice. In our respectful judgment, disclosure of CLICO Life's indebtedness to Mr. Parris and Branlee Consulting was very relevant in the determination of whether it was just and equitable in all the circumstances of the case for **Chandler J** to have granted the **Mareva** injunction. It should therefore have been disclosed by CLICO Life.

Undertaking in Damages

[108] Finally, we turn to the question whether, as argued by Mr. Gollop, **Gibson CJ** should have discharged the injunction on the basis of CLICO Life's inability to provide an undertaking in damages.

[109] ***CPR 17.4 (2)*** provides as follows:

> "Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by an order as to damages caused by the granting, continuance or extension of the order."

Undoubtedly, ***CPR 17.4 (2)*** codifies the time-honoured undertaking by a claimant as to damages which a court, save in exceptional cases, requires in deciding the course which most accords with the balance of justice in an application for an injunction. As ***CPR 17.4 (2)*** applies to **Mareva** injunctions, the claimant for such an injunction is normally required to give an undertaking in damages in the event that the injunction is discharged at the trial as having been without good cause.

[110] At **para [84]** of his judgment, **Gibson CJ** recognised the requirement for an undertaking in damages by CLICO Life but held that that requirement be waived. He reasoned there as follows:

> "The Court notes that this matter arises out of a very serious issue. A company under judicial management has sought the Court's assistance to seek and secure assets for the benefit of thousands of Barbadians and Caribbean policyholders and investors. In my judgment, therefore, the matter is an appropriate

> one to relax the requirements for security to be provided. It is noteworthy, in coming to this conclusion, that [Mr. Parris'] affidavit asserts that he has access to $11 million worth of cash assets and accordingly, without some idea of his statements of expenditure it is difficult to understand the level of prejudice accruing to him."

[111] In our judgment, the reasons given by **Gibson CJ** justified invoking the proviso in ***CPR 17.4 (2)*** to "relax" the requirements for an undertaking in damages by CLICO Life. The words "unless the court otherwise directs" in that proviso undoubtedly resided a discretion in the Chief Justice to waive the requirements for an undertaking in damages by CLICO Life. All that said, that discretion is not at large but must be exercised in a manner consistent with principle. In our view the relevant principle which should govern its exercise is admirably captured by the statement in Spry on *Equitable Remedies*, at *p. 483* that:

> "It has been suggested that an undertaking as to damages ought to be given on every interlocutory injunction" (**Graham v Campbell (1878) 7 Ch D 490** at **494**), but it is the preferable view that in very exceptional cases this course may be inappropriate. So it was said by North J., "If in the exercise of his discretion a judge should think fit to dispense with such an undertaking he could of course do so, and there are cases in which judges have done so; but this would only be under special circumstances (**Attorney-General v Albany Hotel Co [1896] 2 Ch 696 at 700**)."

[112] In our judgment, the stipulation in the case law cited by Professor Spry that an undertaking in damages should only be dispensed with in "exceptional" or

"special" cases should guide the exercise of the ***CPR 17.4 (2)*** discretion to dispense with an undertaking in damages. In light of the foregoing, we are of the view that the circumstances of this case are exceptional and special and warranted the exercise by **Gibson CJ** of his ***CPR 17.4 (2)*** discretion not to require an undertaking in damages by CLICO Life.

Our Conclusion on the Application of the Mareva Principles by Gibson CJ

[113] Our conclusion on the question of the application of the **Mareva** principles to this case is that, for the reasons we set out above, **Gibson CJ** fell into fundamental error in finding persuasive evidence of dissipation on the materials before him. In our judgment, for the reasons outlined above, **Gibson CJ** also fell into serious error in regarding CLICO Life as being under no duty to fully and fairly disclose Mr. Parris' and Branlee Consulting's claims against it and their investments with it because those disclosures were "interesting" but not "material".

[114] These are errors on important matters that bear upon the justice of continuing or discharging the **Mareva** injunction in the circumstances of this case. Thus, even though we agree with **Gibson CJ**'s decision that CLICO Life had shown a good arguable case and with his decision to waive the requirement for an undertaking in damages, we are of the firm view that the balance of justice and

equity in all the circumstances of this case require that the **Mareva** injunction should be discharged.

The Striking Out Issue

[115] We turn now to the striking out issue.

[116] CLICO Life, in its cross-appeal, has attacked the order of **Gibson CJ** that "the application of the third defendant to strike out the case as filed against it is granted" on two bases. The first is that **Gibson CJ**'s failure to comply with *audi alteram partem* principles so vitiates the decision that the order must be set aside, notwithstanding that it involved the exercise of a discretion. The second is that, in any event, **Gibson CJ** applied wrong principles of law in the exercise of his discretion.

[117] With respect to the *audi alteram partem* principles argument, Mr. Alleyne pointed out that, as noted at para [116] above, the striking out issue arose in a separate application by the estate of David Thompson. That application was for summary judgment, or alternatively, "that the statement of case as it relates to [the estate of David Thompson] be struck out" under ***CPR 26.3***. Indeed, that application was fixed for hearing on a set date. Given this, counsel observed that it was not obvious or explained in the judgment of **Gibson CJ** or by counsel on any side how that application came to be considered in the first and second defendant's application for discharge of the **Mareva**

injunction before **Gibson CJ**. Finally, counsel remarked that examination of the trial transcript would reveal that there was no address to the court by any of the parties in the case on the application of the estate of David Thompson despite the parties being recorded as present throughout the trial. All of these circumstances, argued Mr. Alleyne, evidenced an undeniable violation by **Gibson CJ** of *audi alteram partem* principles and that, consequently, the striking out order made by him should be set aside without more, notwithstanding that it involved the exercise of a discretion.

[118] We agree with Mr. Alleyne that the striking out order offends *audi alteram partem* principles and should be set aside on that basis. In our judgment, the striking out order affects CLICO Life's rights materially, as it precludes CLICO Life from making out its claim against the estate of David Thompson. This, as we understand it, is the legal standard for setting aside an order which offends *audi alteram partem* principles.

[119] Mr. Alleyne's second argument, presented as an alternative to the *audi alteram partem* principle argument, was that **Gibson CJ** applied wrong principles of law in the exercise of his discretion. Here also, we agree with counsel that wrong principles were applied by the Chief Justice in the exercise of his discretion.

[120] First, at **para [31]** of his judgment, **Gibson CJ** appears to have claimed to rely on ***CPR 29.9 (1)*** for his striking out discretion in the circumstances of the case before him. To the extent that he relied on this rule, we are of the view that he was plainly wrong.

[121] As **Gibson CJ** noted in his judgment, ***CPR 29.9 (1)*** provides that where a claimant dies and his personal representative does not apply for an order to be substituted as claimant under ***CPR 19***, the defendant may apply for the claim to be struck out. We regret that we do not see how ***CPR 29.9 (1)*** could be invoked in this case. Surely, CLICO Life, the claimant, had not died and its personal representative had not applied for an order to be substituted as claimant. It follows therefore that ***CPR 29.9 (1)*** was not applicable and that the Chief Justice fell into serious error of law in invoking that rule in the case before him.

[122] Second, at **para [32]** of his judgment, **Gibson CJ** proposed an alternative basis to ***CPR 29.9 (1)*** for his striking out discretion. He stated in that paragraph that "there is a more substantive basis upon which the third defendant's position can be predicated". This basis, **Gibson CJ** opined, was to be found "under the wide panoply of case management powers conferred by ***Parts 25*** through ***27*** of ***CPR*** to order the striking out of the action against the third defendant". In fact, the court's striking out powers are to be found

exclusively in ***CPR 26.3 (1)***, the rule under which the estate of David Thompson striking out application was made.

[123] That rule provides:

> "(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case where it appears to the court that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings."

[124] This rule undoubtedly confers on the court discretionary power to strike out a party's statement of case or any part thereof. It is our judgment, however, that in approaching the exercise of the ***CPR 26.3 (1)*** strike out discretion, if this was the rule which he was applying, **Gibson CJ** was bound to apply the authoritative guidelines on the factors which must be considered in the exercise of the striking out discretion laid down by de la Bastide J in the Caribbean Court of Justice (CCJ) case of **Barbados Rediffusion Services Limited v Asha Mirchandani, Ram Mirchandani and McDonald Farms Ltd. CCJ Appeal No. CV 1 of 2005** (**Barbados Rediffusion**).

[125] The appeal in **Barbados Rediffusion** to the CCJ followed this Court's dismissal of the appellant's appeal from an order of the trial judge in which the appellant's amended defence was struck out on the basis of its failure to comply with an unless order for the discovery of documents. The CCJ

allowed the appeal of the appellant and granted an order substantially restoring the appellant's amended defence.

[126] After an extensive review of pre-CPR and post-CPR English case authority and this Court's decision in **Caribbean Broadcasting Corporation v Mirchandani and Ors (2000) 59 WIR 57**, the CCJ outlined, at **paragraphs [44]** – **[47]** of its decision, a list of the factors, stated by the CCJ to be non-exhaustive, which a judge should consider when asked to make a strike out order. We would summarise these factors as follows:

(i) The judge's discretion is a wide and flexible one, to be exercised "as justice requires" in a particular case;

(ii) The judge should start by reminding himself/herself that to strike out a party's case and so to deny him/her a hearing on the merits is an extreme step not to be taken lightly;

(iii) Broadly speaking, strike out orders should be made in two circumstances. The first is when it is necessary in order to achieve fairness. The second is when it is necessary in order to maintain respect for the authority of the court's order.

(iv) In relation to an order to achieve fairness, "fairness" means fairness not only to the non-offending party but also to other litigants who are competing for the finite resources of the court;

(v) If there is a real risk that a fair trial may not be possible as a result of one party's failure to comply with an order of the court, then that is a situation which calls for an order striking out that party's case and giving judgment against him;

(vi) Even where a fair trial is possible, strike out orders should be made when it is necessary to maintain respect for the authority of the court's orders;

(vii) While strike out orders made in order to maintain respect for the authority of the court's order may be described as punitive, strike out orders are not to be made as retribution for some offence given to the court but as a necessary and to some extent symbolic response to a challenge of the court's authority, in circumstances in which failure to make such an order might encourage others to disobey court orders and tend to undermine the rule of law. This is the type of behaviour that may properly be categorised as contumelious or contumacious;

(viii) The correct approach required is a balancing exercise taking into account all the relevant facts and circumstances of the case. It is not a box-ticking exercise;

(ix) In determining whether a party fails to respect the authority of the court's orders, an examination of the reason for the non-compliance is paramount;

(x) Whether there was a breach of an unless order;

(xi) Whether the previous conduct of the defaulting party discloses a pattern of non-compliance;

(xii) Whether the non-compliance with the order was total or partial; and

(xiii) Whether the complying party has suffered prejudice as a result of the non-compliance.

[127] It is true that the CCJ judgment in **Barbados Rediffusion** was handed down before the introduction of ***CPR*** in Barbados. Indeed, de la Bastide J adverted to that fact in propounding the striking out guidelines. However, de la Bastide

J emphasized, at **paragraph [38]** of the judgment, that the procedural changes effected by the English CPR, on which our ***CPR*** are based, "have not resulted in any change in the principles governing the making or refusal of orders the ultimate effect of which is to strike out a party's case and cause judgment to be entered against him because of his failure to comply with a peremptory order of the court".

[128] As we held in **American Life Insurance Company v Ainsley Corbin Civil Appeal No. 45 of 2014 (Ainsley Corbin)**, delivered on 1 November 2017, the **Barbados Rediffusion** guidelines are fully applicable to the exercise of the striking out discretion in ***CPR 26.3 (1)***. We are fortified in this view because the factors identified in the **Barbados Rediffusion** guidelines are entirely conducive to the court, in approaching the striking out discretion in ***rule 26.3***, complying with the enjoinment in ***CPR 1.1 (1)*** that the court deal with cases justly as explicated by **Goodridge JA** in **Blackman (aka June Gill) v Gittens-Blackman and Gittens Grant Civil Application No. 6 of 2012 (Unreported)**. Indeed, as we said in **Ainsley Corbin**, the factors identified in the **Barbados Rediffusion** guidelines appear to us to encapsulate the objectives listed in ***CPR 1.1 (2)***, namely, (a) ensuring that the parties are on an equal footing; (b) saving expense; (c) dealing with cases in ways which are proportionate; (d) ensuring that the case is dealt with expeditiously and

fairly; and (e) allotting to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

[129] **Gibson CJ** did not have regard to the **Barbados Rediffusion** guidelines in exercising his striking out discretion in ***CPR 26.3 (1)***. The exercise of his discretion appears to be based entirely on a theory of the law that the striking out powers under "**Parts 25** through **27** of the **CPR**", and therefore presumably under ***CPR 26.3 (1)***, were wide and not constrained by the **Barbados Rediffusion** guidelines. That theory of the law was fundamentally flawed.

[130] If the **Barbados Rediffusion** guidelines were applied to this case, then, to strike out CLICO Life's claim and so to deny it a hearing in the circumstances of the case before him would only have been appropriate if it was necessary to achieve fairness. In our view, it was not so necessary; fairness could demonstrably be achieved by an amendment to the title of the action to make it clear that the claim was against the personal representative of David Thompson and not the property comprising his estate.

Conclusion on Striking Out Order

[131] Having regard to the foregoing, it is our conclusion that the Chief Justice fell into fundamental errors of law in exercising his discretion in favour of striking out CLICO Life's claim against the estate of David Thompson. Not only was

the discretion exercised in breach of the *audi alteram partem* principle, but it was also exercised on plainly wrong principles of law. In consequence, we would set aside the Chief Justice's order striking out CLICO Life's claim against the estate of David Thompson, order the reinstatement of the action against the third defendant, and direct that the matter be set down for a case management conference.

Costs Issue

[132] At **para [61]** of his judgment, **Gibson CJ** awarded "Costs to the Claimant and the Third Defendant against the First and Second Defendants, to be agreed or assessed". Mr. Gollop QC has taken issue with this award describing it as "a basic and most grievous error committed by the Learned Chief Justice". In furtherance of this contention, Mr. Gollop QC posits that "the basic principle on costs is that costs follow the event" and that "in deciding which party, if any, should pay costs of an application the general rule is that the unsuccessful party must pay the costs of the successful party". Applying these principles to the case before **Gibson CJ**, Mr. Gollop QC maintains that, as there was no application against either the first or second defendants, there was no success by the third defendant against the first or second defendant and that, in those premises, no costs should have been awarded against them.

[133] We are persuaded by Mr. Gollop QC's submissions on this point for the reasons that follow hereafter.

[134] **Section 85** of **Cap. 117A** provides, in so far as is relevant is to this matter, that, "subject to rules of court", costs are in the discretion of the court and that each court has power to determine by whom costs are to be paid. In turn, ***CPR 64.6 (1)*** provides as follows:

> "In exercising its discretion under section 85 of [Cap 117A], the general rule is that the court will order the unsuccessful party to pay all or part of the costs of an unsuccessful party."

[135] ***CPR 64.10***, in an exception to the general rule in ***CPR 64.6 (1)***, allows for "Costs against a person who is not a party". ***CPR 64.10***, however, sets up a number of procedural steps which must be followed if that rule is to be invoked. These steps were not followed in the matter before **Gibson CJ**. Consequently, the general rule in ***CPR 64.6 (1)*** applied with the result that, because the third defendant was not successful against the first and second defendants, costs for the third defendant could not properly be awarded against them. The costs order made by **Gibson CJ** to the third defendant against the first and second defendant must be set aside.

[136] For the avoidance of doubt, we would add here, that in light of our decision to set aside **Gibson CJ**'s decision to refuse the discharge of the **Mareva** injunction and our decision that it be discharged, **Gibson CJ**'s award of

costs to CLICO Life against Mr. Parris and Branlee Consulting is also set aside. Mr. Parris and Branlee Consulting being the successful parties are entitled to costs against CLICO Life in this appeal.

DISPOSAL

[137] For the foregoing reasons, it is ordered that:

1. The appeal of the first and second appellants against the decision of **Gibson CJ** to uphold the freezing order granted by **Chandler J** is allowed.

2. The freezing order granted by **Chandler J** and upheld by **Gibson CJ** is discharged.

3. The order of **Gibson CJ** that the application of the third defendant to strike out the case as filed by the claimant against the third defendant is set aside.

4. The action by the claimant against the third defendant is reinstated and it is directed that the matter be set down for a case management conference.

5. The order of **Gibson CJ** that costs be awarded to the third defendant against the first and second defendants is set aside.

6. Costs in this appeal to the first and second appellants against the respondent to be assessed if not agreed.

Justice of Appeal

Justice of Appeal **Justice of Appeal**