BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Application No. 22 of 2018

IN THE MATTER of an Application by the Financial Services Commission for an Order that CLICO International Life Insurance Limited be placed under Judicial Management;

AND IN THE MATTER of the Insurance Act, Cap. 310 of the Laws of Barbados
AND IN THE MATTER of the Companies Act, Cap. 308 of the Laws of Barbados

BETWEEN:

RUSSELL CRUMPLER (The Judicial Manager of CLICO International Life Insurance Limited appointed in the territory of Montserrat) — **Applicant**

AND

THE FINANCIAL SERVICES COMMISSION — **First Respondent**

CLICO INTERNATIONAL LIFE INSURANCE LIMITED — **Second Respondent**

BIPA INC. — **Third Respondent**

Before: The Hon. Sir Marston C. D. Gibson, K.A., Chief Justice, The Hon. Kaye C. Goodridge, Justice of Appeal and The Hon. Margaret A. Reifer, Justice of Appeal, (Acting)

2019: February 27
May 16

Mr. Philip McWatt and Ms. Wendy Maraj for the Applicant
Mr. Adrian King QC and Ms. Destini Haynes for the First Respondent
Mr. Ramon Alleyne QC and Ms. Sheena-Ann Ince for the Second Respondent
No appearance by the Third Respondent

DECISION

GOODRIDGE JA:

INTRODUCTION

[1] In this application, Mr. Russell Crumpler, (the intended appellant), the judicial manager of the Montserrat branch of CLICO International Life Insurance Limited (CLICO Life), seeks leave to appeal against the decision of **Chandler J** dismissing his application for leave to be joined as a party in the judicial management proceedings of CLICO Life.

BACKGROUND

[2] CLICO Life is an insurance company incorporated under the provisions of the **Insurance Act Cap. 310 (Cap. 310)** which conducted business in Barbados and throughout the Caribbean. Financial difficulties led to CLICO Life being placed under judicial management by an order made by **Chandler J** on 14 April 2011.

[3] Deloitte Consulting Limited acting through Mr. Patrick Toppin was appointed by the court to act as judicial manager of the Barbados branch of CLICO Life.

[4] Mr. Russell Crumpler, Managing Director of KPMG (BVI) Limited, was appointed to act as the judicial manager of the Montserrat branch of CLICO Life (CLICO Montserrat) by order of the High Court of Montserrat made on 20 May 2014.

[5] By order made on 22 December 2015, **Chandler J** approved a restructuring proposal from the Ministry of Finance and Economic Affairs in respect of the division and management of CLICO Life's assets and the courses of action which were most advantageous to its policyholders. Paragraph 2 of the order stated that: "Option One is limited to the policies, assets and liabilities of policyholders on the Barbados Register of CIL policyholders even though the total assets of CIL are collectively held for the benefit of the policyholders of CIL located in Barbados and the Eastern Caribbean territories…Therefore subject to paragraphs 4 and 5 herein this Honourable Court makes no orders as to course (sic) of action which should be taken with respect to the proportionate value of CIL's assets, policies and liabilities to which the Eastern Caribbean policyholders are beneficially entitled."

[6] Paragraphs 4 and 5 of the order gave the judicial manager liberty to pursue the proposal classified as "Option Two", with the support of the Government of Barbados through New Life Investment Company Inc. (NLICO), provided that the judicial manager receive written agreement from the Governments of

the Eastern Caribbean Currency Union (ECCU) and the requisite court approvals which evidenced that NLICO is permitted to hold and/or manage the real estate assets of CLICO Life in Barbados to which the policyholders in the Eastern Caribbean are beneficially entitled, the value of such assets being estimated at $31 million. If written approval was obtained, NLICO was required to issue a further bond to CLICO Life in the above value and CLICO Life would immediately transfer to NLICO the remaining real estate assets of CLICO Life in Barbados.

[7] The effect of the court's order was that there was to be an equitable division and "ring-fencing" of certain assets of CLICO Life.

[8] Thereafter, correspondence was exchanged between Mr. Crumpler and Mr. Toppin during which Mr. Crumpler made several requests for disclosure of information relating to the assets and management of CLICO Life, in order for him to execute his duties as judicial manager to the High Court and policyholders of Montserrat.

[9] This exchange included Mr. Crumpler's letter dated 19 June 2017 to Mr. Toppin in which Mr. Crumpler referred to previous correspondence to Mr. Toppin to which he had received no response, and also made 16 specific requests for information and documentation. Mr. Crumpler further requested that Mr. Toppin provide a response by 30 June 2017. By email dated 5 July

2017, Mr. Toppin responded to indicate that Mr. Crumpler's extensive requests were being considered.

[10] By email dated 11 August 2017, Mr. Toppin wrote to Mr. Crumpler indicating that the High Court had approved the Barbados restructuring plan. On 22 September 2017, Mr. Toppin sent a detailed response to Mr. Crumpler's requests stating, *inter alia,* as follows:

> "We refer to your letter of June 19, 2017 dealing with the judicial management of the Montserrat branch of CIL. In that letter, you included a detailed list of requests for certain specific information relating to the judicial management of CIL in Barbados. While Deloitte Consulting Limited ("DCL") is happy to share information which relates to branch operations in Montserrat, DCL is unable to accede to your request for any financial or commercial information which is beyond the scope of that which relates to Montserrat branch operations.
>
> DCL in accordance with its obligations to the Courts and regulators in the jurisdictions in which it is appointed judicial manager, periodically files and serves reports on CIL. Such reports once filed become a part of the public record and DCL has shared the same with the Judicial Managers appointed in St. Lucia, St. Kitts Nevis and Montserrat. DCL commits to continuing this practice, as a matter of courtesy.
>
> Please see attached a list of your requests and our responses thereto…."

[11] Mr. Toppin's response was still not to Mr. Crumpler's satisfaction and as a result of this Mr. Crumpler commenced legal proceedings.

THE APPLICATION IN THE HIGH COURT

[12] On 7 November 2017, almost two years after the High Court approved the proposal in respect of CLICO Life, Mr. Crumpler filed a notice of application certified as urgent, accompanied by a supporting affidavit in the High Court seeking an order that he be joined as a party to the judicial management proceedings or alternatively that he be granted permission to file evidence in the petition and make representations at any hearing as "interested parties". Mr. Crumpler also sought an order that the judicial manager of Barbados make disclosure of certain documents.

[13] In the certificate of urgency counsel for Mr. Crumpler, Mr. Philip McWatt, raised questions as to the operation of the Barbados Restructuring Plan since it was limited to a plan for the Barbadian policyholders, despite the fact that the total assets of CLICO Life are collectively held for the policyholders in Barbados and the branches of the Eastern Caribbean territories.

[14] The primary ground on which Mr. Crumpler sought to be joined as a party to the proceedings was that the order made by **Chandler J** on 22 December 2015 was binding on him as the judicial manager of CLICO Montserrat and that consequently, he had a duty to make representations before the court regarding the implementation of the terms of the order in respect of the policyholders in

Montserrat. He stated that he owed a duty of care to the policyholders of Montserrat to ensure that any distribution that occurred was fair and equitable.

[15] According to his affidavit of 21 November 2017, Mr. Crumpler was of the opinion that if he was unable to join the proceedings and to obtain the necessary disclosure, there was a risk of the assets being dissipated or transferred without being subject to any review or input from him as the judicial manager in Montserrat.

[16] Mr. Crumpler deposed that the application to be joined as a party was filed at the time that it was because he was previously under financial constraints and that he "hoped we could make our views known directly to Mr. Toppin".

[17] In relation to the application for disclosure, the main ground for that application was that Mr. Crumpler had enquired about the status of the assets of CLICO Life and the judicial manager's plan to distribute the assets and had received either no response or no adequate response.

[18] In his affidavit Mr. Crumpler also stated, "At this time, I still do not have certainty as to how funds paid by Montserrat policyholders were moved around CIL, which policyholders made payments when, the level of claims paid out against specific policies and many other questions specific to the Montserrat policyholders…I have never received the DCL forensic analysis of the inter branch/intercompany balances which I requested…".

As a result, Mr. Crumpler alleged that Mr. Toppin was "uncooperative".

[19] He emphasised that, while he was an independent judicial manager, there was an interdependent relationship between CLICO Montserrat and CLICO Life and that the information was fundamental to him executing his duties.

[20] In sum, Mr. Crumpler was of the view that unless he was able to make representations in the High Court, he would continue to be hampered in his ability to execute his responsibilities and duties as the judicial manager of CLICO Montserrat.

[21] In response, Mr. Toppin deposed in his affidavit filed on 27 November 2017 that he had received no written confirmation and agreement from the governments of the Eastern Caribbean in pursuance of Option Two of the restructuring proposal. He stated that there was no duty imposed on Mr. Crumpler by the terms of the December 2015 order. Moreover, the ECCU, of which Montserrat was a member, was represented at the hearing on 31 July 2017 as an interested party to the proceedings. Mr. Toppin pointed out that independent judicial managers were appointed in three Eastern Caribbean territories and they were subject to local legislation and jurisdictional preferences.

[22] Mr. Toppin stated that the High Court had "ring-fenced" assets in Barbados for the benefit of the Eastern Caribbean policyholders and as a result, there

could be no detrimental effect or prejudice which would be caused to those policyholders because of a proposal which was limited to Barbadian policyholders. This allocation of assets was based on "the proportionate part of the liabilities of the Respondent [CLICO Life], utilising actuarial valuation of insurance policies of the Respondent [CLICO Life]."

[23] Further, Mr. Toppin stated that as far that he was aware "the branch operations in Montserrat has its own bank account and cash derived from those operations kept in Montserrat. Policyholders in Montserrat do not make payments to the Respondent's offices in Barbados, instead those payments are made to the branch operation in Montserrat."

THE JUDGE'S DECISION

[24] At **para [35]** of his decision **Chandler J** stated that "All of the parties agreed that the relevant law is contained in ***CPR 19.2 (3) (a)*** and ***(b)***…" The judge noted that these provisions were considered in **Financial Services Commission and BIPA Inc. v British American Insurance Company (Barbados) Limited** (**Unreported, October 31, 2012**) (**BIPA**) where **Burgess JA** declared the law with respect to the addition of parties under ***CPR***.

[25] **Chandler J** went on to consider "whether there are matters in dispute between the parties." The judge stated that "Mr. McWatt submitted that there was a

clear dispute between Mr. Crumpler and the JM with respect to whether and what premiums were received from the Montserratian policyholders. This issue arose from requests made by Mr. Crumpler for financial information from the JM….In essence, his client wants to be joined in the proceedings so as to ascertain 1) what monies, if any, were received from Montserrat, and 2) the manner of their application to the acquisition of the Clico properties. By tracing these monies, he is seeking to claim an equitable interest in the properties."

[26] At **para [40]** of his decision, **Chandler J** expressed the opinion that "Clico made investments for the benefit of all its policyholders including Montserratians." He stated at **para [43]** "to hold that there is an issue in relation to the premiums paid by the Montserratian policyholders in relation to their claim to an equitable interest in the Clico properties separate and distinct from all other policyholders would give them an unfair preference over the other policyholders or be a fraud upon the other policyholders. It would mean a reopening of the **s. 62** procedure which has already been completed."

[27] The judge was of the view that to segregate CLICO Life's assets into who paid in what premiums and how they were allocated would undermine Option One as contained in his order in respect of the restructuring proposal and

negatively impact the potential realisation of Option Two. The judge considered that there was no issue in dispute between the parties to be resolved which required Mr. Crumpler to be joined as a party to the petition and that Mr. Crumpler was precluded from relying on the court's inherent jurisdiction as a basis to be joined.

[28] With respect to permitting Mr. Crumpler to file evidence in the petition and to make representations at the hearing, **Chandler J** found that since there is no issue to be resolved and since the **section 62** procedure had been completed, it would be inappropriate to grant such permission.

[29] On the final issue of disclosure, **Chandler J** considered that "A literal reading of the ***CPR 28.2*** shows that the duty to disclose exists between parties to the action before the court." It follows that the effect of the judge declining to allow Mr. Crumpler to join the proceedings was that not being a party to the action precluded Mr. Crumpler from being granted disclosure.

THE APPLICATION FOR LEAVE TO APPEAL

[30] Displeased with **Chandler J's** decision, the intended appellant filed a notice of application for leave to appeal on 15 November 2018, and an amended notice of application on 8 January 2019. The grounds of the amended notice of application are:

> "1. The Learned Judge of First instance misdirected himself in law when he held that the order sought by the Applicant in the

Court below was a challenge to his previous order approving Phase 1 of the Plan which is limited only to the policies, assets and liabilities of policyholders on the Barbados Register of the Second Respondent made on the 22nd day of December, 2015;

2. The Learned Judge of first instance erred in law when he found that the applicant could not be joined under Part 19.3 of the Supreme Court (Civil Procedure) Rules, 2008 and/or the Court's inherent jurisdiction arising from the provisions of Section 62 of the Insurance Act Cap. 310 of the Laws of Barbados for the purpose of hearing all matters in dispute.

3. The Learned Judge of First instance failed to accept that he had a continuing jurisdiction to supervise the implementation of the approved plan in order to ensure that the said plan was carried out fairly in relation to all the policyholders of the Second Respondent and/or if he did so accept this duty and/or jurisdiction to supervise he failed to carry out this duty insofar as he:

> 3.1 failed to give any weight or sufficient weight to the discrepancies highlighted in the Applicant's Affidavits between what the Judicial Manager had reported in its report of 22nd of September 2017 that the Second Respondent's assets held for the Montserrat branch were only BDS$445,000 while the Applicant placed evidence in the court below of an admission made by an officer of the Second Respondent's Barbados branch acknowledging that the Montserrat branch was owed the figure of $45,135,188.00;
>
> 3.2 Failed to give any weight or sufficient weight to an admission made by an officer in the Second Respondent's Barbados branch as set out in the Affidavit evidence of the Applicant placed before the Leaned (sic) Judge of first instance, that the

Second Respondent normally pooled funds from all branches of the Second Respondent to make investment decisions and investments may be captured in one territory to the extent that the Montserrat branch has contributed funding for those investments;

3.3 Failed to give any weight or sufficient weight to evidence placed in the court below by the Applicant that larger deposits, typically made by corporate policyholders into the bank of Montserrat, which were transferred to the Second Respondent and/or CLICO Barbados and Colonial Life Insurance Company (Trinidad) Limited had not been reflected in the Judicial Manager's Report of 22nd September, 2017 detailing the Second Respondent's purported assets held for the Montserrat branch;

3.4 Failed to give any weight or sufficient weight to the evidence placed in the court below by the Applicant that the bank of Montserrat's account statements for the Montserrat branch did not suggest anthing approaching the level of deposits necessary to account for the liabilities of the Montserrat branch of BDS$36.5 Million reflected in the Judicial Manager's report of 22 September, 2017;

3.5 Failed to acknowledge and/or appreciate that the failure of the Judicial Manager of the Second Respondent to carry out an inter-branch reconciliation in order to more accurately determine what the respective assets were for each territory was significant, especially as the reasons advanced

> for not carrying out this exercise were speculative in that no attempt to carry out the inter-branch reconciliations was ever made; and
>
> 3.6 Failed to appreciate the prejudicial effect on Montserrat and the Easter Caribbean resulting from the failure to carrying (sic) out the inter-branch reconciliations in that consequently it most likely resulted in inaccurate results when the time came for the Judicial Manager to ring fence the assets in Barbados to separate the assets between what was thought to be owed to the Barbadian policyholders and those of the Eastern Caribbean for the implementation of the Phase 1 of the approved plan.
>
> 4. The Applicant will crave leave of this Honourable Court to amend or supply further grounds upon the Learned Judge of first Instance (sic) making his written reasons for his decision available."

THE ISSUES

[31] In our opinion, the principal issue which arises for this Court's determination is whether leave should be granted to appeal the decision of **Chandler J**. However, a preliminary issue emerged at the hearing of the application, namely, whether this Court had jurisdiction to hear the intended appellant's application since the intended appellant was not a party to the proceedings in the court below. We shall deal with this preliminary issue before proceeding further.

DISCUSSION

The Preliminary Issue

[32] Mr. McWatt submitted that by **section 2** of the **Supreme Court of Judicature Act Cap. 117A (Cap. 117A)**, a party was defined as including "every person served with notice of, or attending, any proceeding, although not named on the record." Counsel contended that there was no provision in **Cap. 117A** which limited an appellant to a person who was named on the record in the High Court proceedings. Counsel cited the case of **MA Holdings Limited v George Wimpey UK Ltd, R (of the Application of) & Anor [2008] 3 All ER 859** in support of this submission.

[33] In our view, it is important that we remind ourselves of our jurisdiction in respect of hearing and determining appeals. **Section 52** of **Cap. 117A** stipulates that "Except as otherwise provided in this or any other enactment, the Court of Appeal has jurisdiction to hear and determine, in accordance with the rules of court, appeals from any judgment or order of the High Court or a judge thereof."

[34] Here, there was no argument that **Chandler J** did not make "any judgment or order", nor was there any argument that "this or any other enactment" would prohibit this Court from hearing this appeal. Though not a party to the proceedings in the court below, the intended appellant was affected by the

decision given by the judge in that he was unsuccessful in his application. There is therefore no doubt in our minds that the intended appellant is entitled to seek leave to appeal the judge's decision and that this Court is empowered to hear his appeal if the application for leave is successful.

The Principal Issue

[35] We turn now to the principal issue of whether leave to appeal should be granted. In considering this issue, it is important that we bear in mind the principles established in **BIPA**.

The BIPA Principles

[36] According to **BIPA**, the following criteria must be satisfied in order for an intended appellant to obtain leave to appeal a decision of a lower court: (i) the intended appellant needs to show that the intended appeal has a realistic prospect of success, and (ii) even if this Court is not satisfied that the intended appeal has a realistic prospect of success, there are compelling reasons why the issues raised in the case should nevertheless be heard by this Court.

[37] We will consider each of these in turn.

Whether the intended appeal has a realistic prospect of success

[38] It must be stated that, while the intended appellant has set out the grounds of his application for leave, he has not set out "concisely the grounds of the proposed appeal, or preferably have attached to it [the application] a draft of

the proposed notice of appeal" as required by ***CPR 62.2 (2) (a)***. However, the intended appellant supported his application by an affidavit showing the nature of the case, the questions involved and the reason why leave should be given as required by ***CPR 62.2 (2)(b)***.

[39] Notwithstanding the absence of a draft notice of appeal, an examination of the grounds of the application reveals that they are in fact grounds of the proposed appeal.

[40] The question which we must now determine is whether the intended appellant has shown that his intended appeal in respect of being added as a party to the judicial management petition has a realistic prospect of success.

[41] This leads us to a consideration of ***CPR 19*** which deals with the addition and substitution of parties. In particular, ***CPR 19.2 (3)*** provides as follows:

> "The court may add a new party to proceedings without an application having been made to do so, where
>
> (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
>
> (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue."

[42] There are two observations which must be made here. First, the addition of a new party to proceedings lies entirely within the discretion of the court.

Therefore, in order for this Court to grant leave, the intended appellant must show "that there is more than a fanciful prospect of [him] persuading the Court of Appeal to depart from that Court's entrenched principle of non-interference with the judicial exercise of a trial court's discretion unless such exercise is "clearly or blatantly" or "plainly" wrong": **para [10]** of **BIPA**.

[43] Second, ***CPR 19.2 (3)*** is concerned with permission being granted in a situation where a party is requesting to be added for the resolution of "all the matters in dispute in the proceedings" or "an issue involving the new party which is connected to the matters in dispute in the proceedings".

[44] According to Mr. McWatt, there were matters in dispute which pointed to the irreconcilable differences between the "accounting undertaken by the judicial management" and "the reality of what went on in terms of the assets and liabilities of the policyholders in Montserrat". Counsel stated that the former Vice President of Finance in Barbados admitted that CLICO Life had received funds from Montserrat in excess of $45 million, which were not filed in the reports of the judicial manager.

[45] Counsel disagreed with **Chandler J's** finding that the intended appellant's claim was to an equitable interest in CLICO Life, distinct from the other policyholders. He instead argued that his case is that the methodology adopted by the judicial manager was flawed in that he failed to carry out inter

branch reconciliation, and this may have led to incorrect calculations which may have ultimately affected the ratio of distribution of the assets and liabilities of CLICO Life.

[46] Counsel denied that he was seeking to challenge **Chandler J's** order that approved the restructuring proposal by a circuitous route. In his estimation, since he could not sue the judicial manager who was "immune from certain suits at the conclusion of his matter", he was asking the court to "control the judicial manager" and to compel him to properly carry out his statutory obligations. Counsel stressed that **Cap. 310** allowed the court to hear from persons who had an interest in the matter and that the order of **Chandler J** gave interested persons liberty to apply.

[47] There is no dispute that **Chandler J** correctly stated the law in respect of adding parties to proceedings. The question is whether the intended appellant has shown that there is a realistic prospect of him establishing that the judge was "clearly or blatantly" or "plainly" wrong in his application of the law to the facts. In our opinion, the intended appellant has not discharged that burden for the reasons which follow.

[48] At **para [21]** of **BIPA**, **Burgess JA**, as he then was, stated:

> "...the operation of **Part 19.2(3**) is expressly limited to allowing the court to "resolve all the matters in dispute in the proceedings." Thus, a critical element of the tests set down in Part 19.2(3) is that there must be shown to be "matters in dispute"

> before a party can be joined under that Part: In the Supreme Court of New South Wales case of **Re Great Eastern Cleaning Services Pty. Ltd (1978) 2 NSWR 278 at 281**, the expression "matters in dispute" was thought to mean " what could be considered to be the issues in the proceedings"."

[49] Counsel for the second intended respondent, Mr. Ramon Alleyne QC, in his oral arguments underscored the fact that in this case the phrase "in the proceedings" in ***CPR 19.2 (3) (a)*** refers to the judicial management proceedings. He submitted that the nature of these proceedings was to determine the most advantageous order in favour of the policyholders of CLICO Life. Therefore, the issues raised by Mr. McWatt do not relate to the judicial management proceedings since these issues were effectively considered when **Chandler J** determined the most advantageous plan for the policyholders in his order of 22 December 2015.

[50] We agree with Mr. Alleyne QC.

[51] First, judicial management is a management procedure on behalf of the court aimed at saving insurance companies from liquidation. As was stated by **Burgess JA** at **para [18]** in **BIPA**:

> "...the judicial manager is at the heart of the judicial management. Broadly speaking, the role and function of the judicial manager is to manage the business of the insurance company under the court order and ultimately to produce a report spelling out its recommendations to the court as to how the company should be dealt with. It must be stressed that a judicial manager enjoys only such powers and has such duties as the court deems desirable and must always act under the control of

> the court. Judicial management is therefore a management process on behalf of the Court and is not aimed at resolving disputes."

[52] Second, the alleged or potential disputes between the intended appellant and Mr. Toppin appear to be professional in nature. The intended appellant seeks to challenge the "accounting undertaken by the judicial management", the methodology applied by the judicial manager and his lack of cooperation in acceding to his requests. It is clear to us that these issues/disputes are not disputes in the judicial management proceedings.

[53] Third, the issues would not meet the test of "matters in dispute in the proceedings" under ***CPR 19.2 (3)***, since the judge had already made the substantive order determining the most advantageous plan for the benefit of the policyholders. That order was the 22 December 2015 order which was a final order pursuant to **section 62** of **Cap. 310**.

[54] Fourth, the intended appellant asserted in paragraph 21 of his affidavit of 21 November 2017, that he needs information to "independently verify the fair and equitable distribution of the assets…and properly assess… whether this proposed distribution under the Barbados Restructuring Plan is in the best interests of those policy holders" and that 'if he is unable to join in these proceedings and obtain the disclosure that I seek there is a real risk of the assets being dissipated (and/or transferred) without being subject to any

review or input from me as the JM of Montserrat. There is a real risk that this will have an irreversible detrimental impact on the interests of the Montserrat policyholders."

[55] By these assertions the intended appellant is in effect seeking to challenge the plan which was approved by **Chandler J**. To our minds, such challenges could not be addressed by way of joinder but ought properly to be addressed either by way of appealing the order or the bringing of proceedings against the judicial manager.

[56] While we agree with Mr. McWatt that **section 63** clothes the judicial manager with immunity in relation to the discharge of the functions conferred on him by **Cap. 310**, in our opinion such immunity would not protect the judicial manager from an action if he negligently carried out his accounting functions to the detriment of the Montserrat policyholders.

[57] It is noted that during the hearings which were conducted by the judge to determine the course of action most advantageous to the policyholders of CLICO Life, the ECCU of which Montserrat is a member, appeared and made submissions to the court. The intended appellant indicated in his affidavit that he was aware of and concurred with the position put forward by the ECCU.

[58] In our opinion, **Chandler J** was correct in holding that "there was no issue in dispute between the parties to be resolved which required Mr. Crumpler to be

joined as a party to the petition". Furthermore, the judge, who had conduct over the judicial management proceedings from its initiation, was in the best position to assess whether any dispute remained outstanding in the judicial management proceedings which would render it desirable that the intended appellant or any other person be added to those proceedings to facilitate the resolution of any issues.

[59] The intended appellant also contended that **Chandler J** erred in law when he found that the intended appellant could not be joined as a party under the court's inherent jurisdiction. Under **Cap. 310**, the judge is invested with the discretion to hear an interested party. However, this discretion must be exercised prior to the making of an order under **section 62**. In the face of the statutory regime set out in **Cap. 310**, the judge could not invoke his inherent jurisdiction.

[60] Mr. McWatt further contended that the intended appellant is in the same position as NLICO and ResLife. These entities were allowed to make representations in 2017 at a hearing in respect of the terms of the Transfer Agreement and Implementation of the December 2015 order. However, NLICO and ResLife were involved in the implementation of the December 2015 order and were injecting large amounts of cash and assuming certain liabilities. Clearly, the intended appellant is not involved in the

implementation of the order nor is he bound by its terms unlike NLICO and Reslife.

[61] Accordingly, we are of the view that the intended appellant's application for leave should fail on the ground that his intended appeal does not have a realistic prospect of success.

Whether the intended appellant has shown that there are compelling reasons why the appeal should be heard

[62] In applying the **BIPA** principles, the second criterion in determining an application for leave to appeal is, even if this Court does not find that the intended appeal has a realistic prospect of success, leave may nevertheless be granted if there are compelling reasons why the issues raised in a case should be heard. Such reasons may exist where there is an issue which should be examined by this Court in the public interest, or where the case raises an issue where the law requires clarification.

[63] In his oral arguments, Mr. McWatt after indicating that the present application is the same as that heard by this Court in **BIPA**, quoted **para [29]** of that decision where **Burgess JA** stated:

> "In my view, however, the case undeniably raises for the first time at least the narrow but important question of who, other than the Supervisor of Insurance and the company in question, may be parties in judicial management proceedings after the appointment of a judicial manager. The intended appeal affords

> an opportunity for the Court of Appeal to clarify the law on this matter."

[64] We note that there are two fundamental distinctions between **BIPA** and this case.

[65] First, **Chandler J** had made a final order in respect of the division and management of CLICO Life's assets almost two years prior to the intended appellant's claim to be joined as a party to the judicial management proceedings. In **BIPA**, the proceedings had not yet reached the stage of a final order with respect to the distribution of assets and liabilities of British American Insurance Company Ltd when the application was made for joinder in the proceedings.

[66] Second, CLICO Montserrat, as was previously mentioned, forms part of the ECCU and that entity's interest had been represented at the judicial management proceedings prior to the making of the final order.

[67] Further, while the proposed appeal would provide an opportunity to clarify the law on who may be parties in judicial management proceedings after the appointment of a judicial manager, we are of the opinion that there are compelling public policy reasons why leave should not be granted. It must be stressed that the December 2015 order made specific determination on quantum as to values of the assets and liabilities attributable to the policyholders of Barbados and the Eastern Caribbean and also divided the real

property assets. It was made at the conclusion of the judicial management process set out in **Cap. 310**. A substantial number of persons have been affected by this process which has taken some time. There has been a settlement/resolution and a plan which is being implemented. To grant leave to appeal would be to allow that very plan to be undermined.

[68] In these circumstances, we are of the opinion that there are no compelling reasons why the intended appeal should be heard. Consequently, the application for leave should be refused.

DISPOSAL

[69] It is therefore ordered as follows:

1. The application for leave to appeal is refused.
2. Each party shall bear their costs of the application.

Chief Justice

Justice of Appeal Justice of Appeal (Acting)