THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH OF JUSTICE
(CIVIL)

ANGUILLA

CLAIM NO. AXAHCV2011/0082

IN THE MATTER OF LEEWARD ISLES RESORTS LIMITED AND IN THE MATTER OF AN APPLICATION UNDER SECTION 211 OF THE COMPANIES ACT R.S.A c. C65

AND

IN THE MATTER OF THE COURT SUPERVISION OF THE LIQUIDATION OF LEEWARD ISLES RESORTS LIMITED

CLAIM NO. AXAHCV2012/0029

IN THE MATTER OF THE COMPULSORY WINDING UP OF LEEWARD ISLES RESORTS LIMITED

BETWEEN:

(1) BRILLA CAPITAL INVESTMENT MASTER FUND SPC LIMITED (A Cayman Island segregated portfolio company, for and behalf of Brilla Cap Juluca Sgregated Portfolio M, a segregated portfolio thereof)
(2) ANGUILLA HOTEL INVESTORS LIMITED

Respondents/Applicants

AND

(1) LEEWARD ISLES RESORTS LIMITED (in liquidation)

Respondent

(2) CHARLES HICKOX
(3) LINDA HICKOX
(4) CAP JULUCA L&C LIMITED

Applicants/Respondents

(5) WILLIAM TACON

(the former joint liquidator of Leeward Isles Resorts Limited)
(6) STUART MACKELLAR
(the former joint liquidator of Leeward Isles Resorts Limited)
(7) JOHN GREENWOOD
(the liquidator of Leeward Isles Resorts Limited)
(8) REGISTRAR OF COMPANIES

Respondents

CLAIM NO. AXAHCV 2011/0095

IN THE MATTER OF MAUNDAYS BAY MANAGEMENT LIMITED AND IN THE MATTER OF AN APPLICATION UNDER SECTION 211 OF THE COMPANIES ACT R.S.A c. C65

AND

IN THE MATTER OF THE COURT SUPERVISION OF THE LIQUIDATION OF MAUNDAYS BAY MANAGEMENT LIMITED

BETWEEN:

(1) BRILLA CAPITAL INVESTMENT MASTER FUND SPC LIMITED (A Cayman Island segregated portfolio company, for and behalf of Brilla Cap Juluca Sgregated Portfolio M, a segregated portfolio thereof)
(2) ANGUILLA HOTEL INVESTORS LIMITED

Respondents/Applicants

AND

(1) MAUNDAYS BAY MANAGEMENT LIMITED (in liquidation)

Respondent

(2) CHARLES HICKOX
(3) LINDA HICKOX
(4) CAP JULUCA L&C LIMITED

Applicants/Respondents

(5) WILLIAM TACON
(the former joint liquidator of Leeward Isles Resorts Limited)
(6) STUART MACKELLAR
(the former joint liquidator of Leeward Isles Resorts Limited)
(7) JOHN GREENWOOD
(the liquidator of Leeward Isles Resorts Limited)

(8) REGISTRAR OF COMPANIES

Respondents

Master Charlesworth Tabor (Ag.)

Appearances:

Mrs. Tana'ania Small-Davis with Mrs. Joyce Kentish-Egan and Mr. Kerith Kentish for the Applicants
Mr. Edward Knight with Mr. Ravi A. Bahadursingh for the Respondents
Miss Daliah Joseph for the Liquidator Mr. John Greenwood

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2013: July 24, December 13
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Practice – Stay of Proceedings – Eastern Caribbean Supreme Court (Anguilla) Act R.S.A. E15 Section 17

RULING

[1] TABOR, M (Ag.): This is an application by the Second, Third and Fourth Respondents Charles Hickox, Linda Hickox and Cap Juluca L & C Limited filed on 31 May, 2013 along with an affidavit in support by Charles Hickox filed on the same date for an order:

1. Staying the proceedings on the Applicants' application filed on 11 June, 2012 seeking:

   (a) an order setting aside the sale agreement dated 2 May, 2012 between the First, Second and Third Respondents in each of the matters above; and

   (b) directions to the Seventh Respondent in each of the matters above for the proper and orderly sale of the assets forming the subject of the Sale Agreement pending determination of the Second, Third and Fourth Respondents' application for leave to appeal to Her Majesty in Council and or determination of such appeal if leave is granted.

2. Costs of this application to be costs in the cause.

[2] The grounds of the application are as follows:

1. The Applicants' filed an application seeking (1) an order setting aside the sale agreement dated 2 May, 2012 between the First, Second and Third Respondents in each of the matters above; and (2) directions to the Seventh Respondent in each of the matters above for the proper and orderly sale of the assets forming the subject of the Sale Agreement pending determination of the Second, Third and Fourth

Respondents' application for leave to appeal to Her Majesty in Council and or determination of such appeal if leave is granted.

2. The Sale Agreement had been sanctioned by the Court by order made by Mr. Justice Geoffrey Jacques dated 30 April, 2012 ("the Jacques Order"). The First Applicant was dissatisfied with the Jacques Order and appealed against same.

3. When the Set Aside application came on for hearing on 26 November, 2012 by agreement the proceedings were stayed pending the determination of the First Applicant's appeal to the Court of Appeal.

4. The Court of Appeal heard the First Applicant's appeal on 23 and 24 April, 2013 and on 24 April, 2013 made an order setting aside the Jacques Order.

5. The Second, Third and Fourth Respondents are dissatisfied with the Order of the d Majesty in Council.

(6) The issues that will be the subject of an appeal to Her Majesty in Council, which center on the events which transpired on the hearing of the Joint Liquidators' application for sanction of the private treaty sale and their effect on the entry by the Joint Liquidators into the Sale Agreement are the same as are set out in the Set Aside application before the Court. In particular, reference is made to paragraphs 51 through 59 of the Affidavit of Bradley Colmer filed on 11 June, 2012 in support of the Set Aside Application.

(7) In the circumstances, if the Set Aside Application were to be heard in the High Court, there is a real possibility that there could be two different decisions, one by the Privy Council and the other by the High Court, which impact the validity and enforceability of the Sale Agreement.

(8) The Applicants have previously conceded that it was appropriate that the Set Aside Application should be stayed pending the determination of the Court of Appeal for the same reasons as guided the collective thinking then, the Set Aside Application ought to be stayed pending the outcome of the appeal to Her Majesty in Council.

(9) The balance of convenience as it relates to the prejudice to either side favours the Second, Third and Fourth Respondents/Applicants in that there will be no change of the Applicants' circumstances as obtains as present.

[3] The Respondents have filed several grounds in opposition to the Applicants application for the stay. These grounds are as follows:

1. The decision of Justice Jacques (Ag.) has been unanimously overturned by the Court of Appeal.

2. The Respondents' further appeal has no real prospect of success.

3. The Respondents confuse "different" decisions with "inconsistent" decisions. Only the latter is a good reason for a stay but there is no such risk because the decisions are truly "different".

4. There has not been any previous stay.

5. The Respondents' failure to prosecute either their application for a stay of the Court of Appeal's order or their further appeal is indicative that a stay is not necessary but a contrivance to achieve delay.

6. The facts relied upon to support the Respondents' "balance of convenience" argument demonstrate only that the Respondents believe it is convenient to themselves that there should be a stay. They take no account of the prejudice to the Applicants and other creditors.

7. A stay will in fact cause irremediable prejudice and harm to all parties owing to the continued adverse consequences for Cap Juluca Resort. A stay exacerbates all the prejudice upon which the Respondents rely and the harm accrues also to the Applicants.

8. The Respondents simply seek to use delay to entrench a purported defence arising out of their continued occupation. To permit them so to do would be unjust.

Background Facts

[4] The background facts presented by the Applicants and Respondents in their skeleton arguments are certainly not in dispute. I will therefore draw on the presentation of both sides to provide the factual background from which the case is engendered.

[5] Leeward Islands Resorts (LIR) was the original owners of the Cap Juluca Resort. Save for three and a half villas, the Applicants Charles Hickox, Linda Hickox and Cap Juluca L & C Limited are now the owners of all the real property comprising the Cap Juluca Resort.

[6] The Applicants became owners of the Cap Juluca Resort when as a result of the indebtedness of LIR, a notice of default was issued when LIR failed to pay a judgment debt which forced the company into voluntary liquidation. The property of the company was put up for sale by public auction and the Applicants were the successful bidders and thus acquired the vast majority of the real property of Cap Juluca.

[7] A further development in the Cap Juluca saga was the placement of LIR and MBM under voluntary liquidation. The Fifth and Sixth Respondents, Messrs Willaim Tacon and Stuart Mackellar respectively were appointed as the Joint Liquidators. On 12 November, 2011 and 11 January, 2012 on the application of the Joint Liquidators the voluntary liquidations were placed under the supervision of the court. The court subsequently granted an order to the Joint Liquidators for the sale of the assets of the companies by private treaty to the stakeholders.

[8] On 26 March, 2012 the Joint Liquidators initiated the sale process for the assets of the companies. On 29 March, 2012 the Joint Liquidators applied to the court for an order approving the sale of the assets by private treaty to the stakeholders. The Respondents were the only bidders and the Applicants resisted the application on the ground that the closed private treaty sale process to stakeholders only, means that the Joint Liquidators were failing to obtain the best price possible for the assets. The Applicants subsequently put in a bid and Justice Jacques (Ag.) directed the Joint Liquidators to conduct a competitive bid process between the Respondents and Applicants within a certain time period. Following this process Justice Jacques (Ag.) made an order on 30 April, 2012 approving the sale of the private treaty assets to the Fourth Applicant Cap Juluca L & C Limited. As a consequence, through a Sale and Purchase Agreement (SPA) dated 4 May, 2012 the Applicants (Charles Hickox, Linda Hickox and Cap Juluca L & C Limited) acquired all of the remaining Cap Juluca Resort real and personal property except four and a half villas.

[9] On 18 May, 2012 Brilla Capital Investment Master Fund SPC, the unsuccessful bidder in the private treaty assets sale, filed an appeal against the decision of Justice Jacques (Ag.) dated 30 April, 2012 granting permission to the Joint Liquidators to sell the assets. Also, Brilla Capital Investment Master Fund SPC on 11 June, 2012 filed an application to set aside the Sale and Purchase Agreement of 4 May, 2012 on the ground that the act of the Joint Liquidators was so manifestly disadvantageous to the general body of creditors. However, when this application came up for hearing on 26 November, 2012 the parties agreed that the proceedings should be adjourned pending the determination of the Applicant's appeal to the Court of Appeal.

[10] The Court of Appeal heard the matter on 24 April, 2013 and made an order allowing the appeal and setting aside the order of Justice Jacques (Ag.). On 4 May, 2013 the Applicants filed an application for leave to appeal the Court of Appeal's decision to Her Majesty in Council.

Principles Governing the Grant of a Stay

[11] In determining whether to grant an application for a stay of proceedings, the court relies on its inherent jurisdiction. This is highlighted by Rawlins JA (as he then was) in Enzo Addari v Edy Gay Addari (Civil Appeal BVI No. 21 of 2006) when he stated:

> "As far as a stay is concerned, the court has always had an inherent jurisdiction to grant a stay of proceedings on grounds of *forum non conveniens* or while an appeal is pursued. The court also has an inherent jurisdiction to dismiss a claim on the grounds of *forum non conveniens*. The jurisdiction is diecretionary. It is exercisable where the court thinks that it is just and convenient to make such an Order, in order to prevent undue prejudice to the parties or is an abuse of the process of the court. The court is entitled to exercise the power upon such terms as it determines. The court is likely to grant a stay pending an appeal if the appeal could not be compensated in damages".

[12] Section 17 of the Eastern Caribbean Supreme Court (Anguilla) Act also provides a statutory basis for the granting of a stay where it is stated:

> "No cause or proceeding at any time pending in the High Court or in the Court of Appeal shall be restrained by prohibition or injunction, but every matter of equity on which a n injunction against the prosecution of any such case or proceeding might formerly have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto, but –
>
> (a) Nothing in this Act shall disable the High Court or the Court of Appeal if it thinks fit so to do, from directing a stay of proceedings in any cause or matter pending before it; …"

[13] The court when exercising its discretion to grant an application for a stay must balance two important considerations. These considerations were outlined in the Privy Council case of Nawab Sidhee Nuzur Ally Khan v Rajah Oojoodhyaram (1865) L.R. 8 where it was stated that the applicant for a stay must show that injury will result to him/her if the application is not granted and that the application should be made promptly.

[14] Also in the case where there are parallel proceedings before the courts, the court would have the discretion to grant a stay pending the final resolution of the matter and as is noted by Justice Eady in Andrew Wakefield v Channel Four Television Corporation et al (2005) EWHC 2410, "the burden lies upon the applicant seeking to demonstrate, through cogent evidence, that there are sound reasons for a stay in the circumstances of the particular case".

Applicants Submissions

[15] Learned Counsel for the applicants Mrs. Small-Davis noted that pursuant to the Court of Appeal decision in March, 2010, upholding the Hickox Charges, that the debt to Charles Hickox was $140 million making him the most important creditor to LIR up to today.

[16] With respect to the sale of the assets of LIR and MBM by the Joint Liquidators, learned Counsel noted that when the application was made to conduct the sale by sealed bids it was supported by Brilla, who also indicated that the Joint Liquidators did not need any directions by the court. Now Brilla's position is that the Liquidators need direction. Another area of difference between the parties that Counsel highlighted relates to the question as to whether the Set Aside application was previously stayed. While the position of the Applicants is that the Set Aside application was stayed when it came up for hearing on 26 November, 2012; the Respondents are of the view that there was no stay either by consent, court order or otherwise, but rather an agreement that the application should be adjourned pending the appeal by the Court of Appeal.

[17] In commenting on Brilla's appeal of the Jacques Order, Counsel noted that this stemmed from their dissatisfaction with losing the bid on the private treaty assets sale. The Court of Appeal on 24 April, 2013 set aside the Jacques Order and on 4 May, 2013 the Applicants

filed an application for leave to appeal to Her Majesty in Council. Counsel noted that they have a right of appeal given the amount of money/value of property involved in the dispute.

[18] Learned Counsel opined that it is important to note that at the time of the Jacques Order that the Judge was aware of the Brilla offers, since Brilla is suggesting that the Joint Liquidators should have disregarded the direction of the court. Despite the fact that the Joint Liquidators sought the guidance of the court so that there decision could not be impugn, Brilla is now suggesting that the Joint Liquidators were wrong to act with the court's guidance. Counsel is of the view that the court's sanction of the sale and the order approving the sale to the Applicants is a major plank in the Applicants defence to the Set Aside application. Counsel also highlighted the following as pillars against the Set Aside application:

(i) that the Joint Liquidators acted reasonably and above reproach in the discharge of their fiduciary duties to the general body of creditors when they concluded a sale of the private treaty assets to the Third Applicant based on the sanction given by the Jacques Order; and

(ii) that the Applicants' bid which the Joint Liquidators accepted with the approval of the court was in all the circumstances a commercially reasonable and justifiable one and was not, in all the circumstances known to the parties manifestly disadvantageous to the general body of creditors.

[19] Learned Counsel is of the view that the issues raised in Brilla's Notice of Appeal filed on 18 May, 2012 and the issues in the Set Aside Application of 11 June, 2012 are similar and will be the same issues that will be before the Privy Council. Counsel has opined, therefore, that it is disingenuous for Brilla to say that they are different issues. Additionally, it is submitted by Counsel that it is not open to a Judge of coordinate jurisdiction to review the Order of Justice Jacques (Ag.).

[20] The court is urged by learned Counsel to consider the following factors in determining whether the interests of Brilla will be so impacted as to warrant the proceedings continuing despite the appeal to the Privy Council:

(i) Although Brilla was dissatisfied with the Jacques Order, it did not seek a stay of execution of the Order pending appeal. They were content for the Applicants to pay over the purchase price to the Joint Liquidators, for the Applicants to take possession of the property and for the Applicants to assume the responsibilities of management of the Resort.

(ii) The Set Aside application was made on 17 January, 2013, nine months after the Jacques Order.

This Counsel, noted, demonstrates that from Brilla's own perspective they are not so adversely impacted by the SPA that it would warrant immediate and decisive steps on their part. The Applicants on the other hand have applied promptly after the decision of the

Court of Appeal was delivered on 24 April, 2013 with their application for leave to appeal to Her Majesty in Council filed on 6 May, 2013 and their application for a Stay filed on 31 May, 2013.

[21] Learned Counsel is of the view that Brilla's assertion of prejudice should be viewed in light of their conduct throughout the matter. Despite their dissatisfaction with the Jacques Order they did nothing to prevent the transaction from proceeding, now they are exhibiting concern. Counsel also noted that their assertion of the diminution of the assets has not been supported by any evidence, and there has been no challenge to the expenditures of Charles Hickox since assuming ownership of the Resort. Moreover, Counsel has taken issue with paragraph 40 of the Respondents skeleton argument which suggests that the Applicants intend to rely on their expenditure in the Resort to mount a defence analogous to a change of position or *restitutio non integrum*; or alternatively that they will diminish the assets to such an extent that if the Set Aside application is successful the creditors will no longer receive a better return.

[22] In the case of the prejudice to the Applicants, learned Counsel is of the view that this would be self-evident if the stay is not granted, given the money expended by the Resort over the last fifteen months. Counsel reiterated the point that the acquisition of the Resort by the Applicants was sanctioned by the court. He opined that if the Set Aside application proceeds to trial the Applicants' appeal to the Privy Council could turn out to be nugatory.

[23] Learned Counsel concluded her submissions by suggesting that the balance of justice favours the grant of the stay and that no evidence has been presented in support of the allegation that a stay would be detrimental to Brilla. Counsel ended by agreeing with paragraph 13 of the Andrew Wakefield decision where it is stated:

> "There may well be instances in which it would be right to grant a stay, and the most obvious example would be where the parallel proceedings are going to be determinative of the issues in the litigation to be stayed (or at least a significant proportion of them) or otherwise to render a trial unnecessary (or significantly less expensive).

Respondents Submissions

[24] In commencing his submissions learned Counsel Mr. Knight indicated that the Set Aside application will set aside the sale of various assets including real property and rights to conduct business of the Resort which includes the return of $10.3 million. He noted that the assets on both sides are preserved as far as possible, and he urged the court that it should not allow a procedural delay to make this impossible.

[25] Learned Counsel noted that on 6 May, 2013 the Applicants applied for permission to appeal to Her Majesty in Council. He concedes that they are entitled to permission as of right. He noted that they have also applied for a stay of the Respondents Set Aside application, but they have taken no steps to prosecute either application.

[26] With respect to a stay, learned Counsel indicated that the court should look at what to be gained against what to be loss. He noted that the appeal to the Privy Council is unlikely to succeed and is of marginal relevance to the Set Aside application. He noted further that while Counsel for the Applicants has indicated that similar issues are involved in the Set Aside application, she has failed to identify the impact of a favourable Privy Council decision on the Set Aside application. It is the view of Counsel that there is no point waiting for something that makes no difference. It is the view of Counsel that even if the Applicants are successful in their appeal to the Privy Council, the Set Aside application can and will proceed since the appeal concerns the decision of Justice Jacques (Ag.), while the Set Aside application concerns the actions of the Joint Liquidators. With respect to the latter, it is Counsel's view that the entering into a contract by the Joint Liquidators with Charles Hickox to purchase the assets, when a higher offer was proposed was a detriment to the creditors whether Justice Jacques (Ag.) decision was correct or not.

[27] Learned Counsel has opined that what will be loss is the continued diminution of the value of the assets on both sides i.e., money in the hands of the Joint Liquidators and the hotel assets. He noted that this will lead to prejudice continuing on a daily basis to the Brilla Group, other creditors, the employees and the wider community; and will even operate to the prejudice of Charles Hickox because he would lose the expenditure he has incurred. Counsel is of the view that the uncertainty of pending litigation is part of the problem, and the Set Aside application is one crying out for an expeditious resolution.

[28] In addressing the criticism of Counsel for the Applicants for not seeking a stay of the Jacques Order, Mr. Knight noted that that could not have been done since the Order was simply a declaratory one granting permission to the Joint Liquidators to sell. To support this contention he cited the decision of the Court of Appeal in Cukurova Finance v Alfa Telecom HCVAP 2010/0018. He noted further that an injunction could have been sought to restrain the Joint Liquidators from entering into a sale, but after the 2 May, 2012 the sale had happened so an injunction could not have been possible and the only application that could be made was to set the transaction aside.

[29] With respect to the Applicants appeal to the Privy Council, learned Counsel is of the view that apart from launching the application no other action has been undertaken by the Applicants to expedite the matter. He opined that the inference to be drawn from this failure to prosecute is that delay is what is important to Charles Hickox. He noted that the determination of the appeal is unlikely to take place soon and certainly the hearing of the substantive appeal will not happen for a year from the date final permission to appeal is granted. Counsel noted further that the Privy Council itself is very unlikely to expedite the appeal since it tends to expedite cases of some urgency such as "death row" appeals or commercial matters which are of much urgency. Counsel is of the view that the Applicants, despite proclaiming that the Order to be appealed is ruinous to them, have not taken any steps to move their permission to appeal application with any haste or diligence.

[30] Learned Counsel has posited that in light of the Court of Appeal findings, where it was unanimously held that Justice Jacques' (Ag.) Order was so unreasonable that no reasonable Judge could have made it, the Applicants' appeal to the Privy Council has no real prospect of success. Again, Counsel has submitted that the proper inference to be

drawn from the Applicants' conduct is that the proposed appeal to the Privy Council is intended only to cause delay, and the longer the delay the greater the prejudice to all parties.

[31] Learned Counsel addressed the contention by Counsel for the Applicants that the expenditures Charles Hickox indicated that he put into the Resort were not challenged. Counsel refuted this contention by highlighting paragraph 16 of the 2nd affidavit of Adam Cohen filed on 5th July, 2013 where he noted that Charles Hickox's statement of expenditures is only an assertion not supported by any evidence. This assertion is also questioned in light of the report in the press about staff lay-offs at the Resort. Learned Counsel also made the point that Charles Hickox is aware that the issue of forfeiture could arise since after twelve months he has not obtained an Alien Land Holding License and is therefore not the owner of the Resort. This Counsel noted presents a risk to the assets.

[32] In concluding his submissions, learned Counsel Mr. Knight reiterated the point that a stay of the Set Aside application pending the Applicants' appeal to the Privy Council would mean a prolonged delay and the consequent prejudice to both sides irrespective of the outcome of the appeal and/or application. He noted that the balance of convenience favours the expeditious determination of the Set Aside application. As a consequence, he has urged the court to dismiss the application and give directions for the expeditious resolution of the Set Aside application.

Analysis and Conclusion

[33] The application before the court is part of a long history of litigation involving the major investors in the Cap Juluca Resort going back as far as 1998. The Resort is the premier plant in the tourism industry of Anguilla and provides significantly to employment and foreign exchange earnings of the country. It is critical therefore to the body politic for the issues surrounding Cap Juluca to be resolved in as comprehensive and expeditious a manner. During the hearing of this application, I commented obiter that perhaps it would have been a wise move to have a Judge assigned solely to all the Cap Juluca litigation to expedite the process and bring resolution to its many issues. In the hearing of the present application, I was amazed to find out that the issue of obtaining an Alien Land Holding License is still extant for one of the major investors in the Cap Juluca Resort.

[34] Learned Counsel for the Respondents has advanced the position that the result of the appeal to the Privy Council, even if it was successful, would have very little impact on the Set Aside application. The basis for this position is that the appeal concerns the decision of Justice Jacques (Ag.) and the Set Aside application concerns the actions of the Joint Liquidators. Counsel contends that since the appeal and the application deal with different issues, the ensuing decisions must perforce be different and there would therefore be no risk of inconsistency. Following the logic of Counsel for the Respondent, the appeal and the Set Aside application could therefore proceed simultaneously since both courts would be dealing with different decisions.

[35] The position of learned Counsel for the Applicant, however, is that the grounds outlined in the Respondents Notice of Appeal filed on 18th May, 2012 and in their application to Set

Aside filed on 11th June, 2012 are similar. Essentially, these grounds are that Justice Jacques (Ag.) failed to give reasons for his decision, his decision was wrong because he failed to recognize the higher offer of the Respondents and that the exercise of his discretion to sell the assets to the Fourth Respondent led to injustice. It is submitted by Counsel that these are the same issues that will be canvassed before the Privy Council and it is disingenuous for the Respondents to say that they are different issues.

[36] I am in agreement with Counsel for the Applicants that the issues to be addressed in the appeal to the Privy Council and the Set Aside application are quintessentially the same. The decisions engendered from both matters, therefore, cannot be assumed to be different. In any event, the Set Aside application necessitates a review of Justice Jacques (Ag.) Order. Again, I must agree with Counsel for the Applicants that a review of the Jacques Order is not open to a Judge of coordinate jurisdiction to undertake. This fact by itself is a most compelling reason to grant the stay and allow the matter to proceed to the highest court for a final resolution.

[37] It is well established that the granting of a stay is within the inherent jurisdiction of the court. As I have indicated earlier, litigation involving the Cap Juluca Resort has been on-going from almost the inception of this project. This Resort has the potential to make a significant contribution to Anguilla's economy, but this potential will only be fully realized when all the litigation that has surrounded the management and operation of the Resort is brought to an amicable resolution. In the circumstances, I am of the view that granting the application to stay the matter pending the outcome of the appeal to the Privy Council is the right thing to do. At this juncture, I am reminded again of the words of Justice Eady in his decision in Andrew Wakefield when he stated:

> "There may well be instances in which it would be right to grant a stay, and the most obvious example would be where the parallel proceedings are going to be determinative of the issues in the litigation to be stayed (or at least a significant proportion of them) or otherwise to render a trial unnecessary (or significantly less expensive).

Clearly, whatever is the outcome of the appeal to the Privy Council for the Applicants and Respondents, one thing that will become more certain is the way forward for the Resort.

[38] In conclusion, therefore, and for the reasons outlined above I make the following order:

(i) The application by the Applicants filed on 31st May, 2013 to stay the proceedings of the Respondents Set Aside application filed on 11th June, 2012 is granted.

(ii) Costs to be assessed, if not agreed.

[39] I am grateful for the helpful written and oral submissions and authorities of learned Counsel on each side.

Charlesworth Tabor
Master (Ag.)