

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2017/0072

BETWEEN:

1. ADAM J. BILZERIAN
2. LEMON GROVE COMPANY LIMITED
3. CARIBBEAN BUILDING SYSTEMS (ST. KITTS) LTD

Claimant

and

1. TERRENCE V. BYRON
2. BYRON & BYRON
3. KEVIN HORTSWOOD

Defendants

Appearances

Mr. Terrence Byron in person and for the Third Defendant

Parties

Mr. Paul Bilzerian holding a power of attorney for the First Claimant and representing the
Second and Third Claimants

Third Defendant present

CLAIM NO.: SKBHCV 2015/0088

BETWEEN:

1. DAN BILZERIAN
2. KEYAPAHA INTERNATIONAL LTD

Claimants

and

1. LAURA GETZ
2. ROBERT GETZ
3. VICTOR DOCHE
4. VISTAS INFINITAS INTERNATIONAL LLC

Defendants

Appearances

Mr. E. Roberto Hector the First and Second Defendants
Ms. Angelina Gracy Sookoo Bobb for the Third Defendant

Parties

Mr. Paul Bilzerian holding a power of attorney for the First Claimant and representing the
Second Claimant
First and Second Defendants absent
Third Defendant present

CLAIM NO.: SKBHCV 2013/0176
BETWEEN:

ADAM BILZERIAN

Claimant

and

1. ZACHARY GETZ
 2. SAINT CHRISTOPHER CLUB CONDOMINIUMS
 3. SAINT CHRISTOPHER CLUB CONDOMINIUMS ASSOCIATION
- HOMEOWNERS

Defendants

Appearances

Ms. Miselle O'Brien for the First and Third Defendant

Parties

Mr. Paul Bilzerian holding a power of attorney for the Claimant
First Defendant absent
Mr. R. Doche representing the Third Defendant

CLAIM NO.: SKBHCV 2011/0320
CLAIM NO.: SKBHCV 2016/0311
CONSOLIDATED

BETWEEN:

ADAM BILZERIAN

Claimant

and

KEVIN HORSTWOOD

Defendant

Appearances

Mr. Terrence Byron for the Defendant

Parties

Mr. Paul Bilzerian holding a power of attorney for the Claimant
Defendant present

CLAIM NO.: SKBHCV 2013/0021

BETWEEN:

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LIMITED

Claimant

and

CARIBBEAN BUILDING SYSTEMS (ST. KITTS LIMITED)

Defendant

Appearances

Mr. Emile Ferdinand Q.C. with him Ms. Elizabeth Kelsick and Ms. Danni Maynard
for the Claimant

Parties

Claimant represented by Mr. Peter Irish
Mr. Paul Bilzerian representing the Defendant

CLAIM NO.: SKBHCV 2016/0082

BETWEEN:

1. STEPHEN FIRST
2. CORPORATE CAPITAL (ASIA) LIMITED

Claimants

and

1. GREGORY GILPIN-PAYNE
2. INTERNATIONAL INVESTMENTS & CONSULTING LTD.

Defendants

Appearances

No attorney at law representing any of the parties

Parties

Claimants absent
First Defendant absent
Mr. Paul Bilzerian representing the Second Defendant

CLAIM NO.: SKBHCV 2012/0154

BETWEEN:

1. GERALD LOU WEINER
2. KATHLEEN ANN WEINER

Claimants

and

ADAM J. BILZERIAN

Defendant

Appearances

Ms. Jean Dyer for the Claimants

Parties

Claimants absent

Mr. Paul Bilzerian holding a power of attorney for the Defendant

2019: July 25
October 14

JUDGMENT

- [1] **VENTOSE, J.:** Mr. Paul Bilzerian is not an attorney at law admitted to practise in the twin island Federation of Saint Christopher and Nevis. There is no evidence before the court that Mr. Paul Bilzerian was admitted to the bar of the Saint Christopher or Nevis Circuits of the Eastern Caribbean Supreme Court. However, Mr. Paul Bilzerian has acted as an “attorney of fact” in these proceedings as has been noted in some of the unreported decisions relating to the myriad of applications made by him in the numerous matters in which he has participated before this court. This decision relates to the uncontrolled access to the court by a person who has no right of audience before the court and the fact that this has been previously permitted and that Mr. Paul Bilzerian has previously appeared before the Court of Appeal is not a bar to this court deciding whether he was lawfully allowed a right of audience which he did not possess.
- [2] As can be seen above, this matter involves seven (7) claims in which Mr. Paul Bilzerian acts in person on behalf of one of his two sons, namely, Mr. Adam Bilzerian and Mr. Dan Bilzerian, about which more will be explored below, and as a representative, in his capacity as director, of the companies involved in the matters. On 25 July 2019, the court refused the applications for recusal made by

Mr. Paul Bilzerian and prohibited Mr. Paul Bilzerian from representing Mr. Adam Bilzerian or Mr. Dan Bilzerian in person in proceedings before this court. The court also provided brief reasons in the order of 25 July 2019 explaining that more detailed reasons for the order will be provided in a judgment to be handed down to the parties in the usual way in due course. This judgment provides the reasons in full for that order.

Factual Background

- [3] In this section, I will briefly outline the subject matter of the claims, the manner in which the litigation has proceeded and the circumstances leading to the applications made by Mr. Paul Bilzerian for me to recuse myself from each of the seven (7) claims considered in this judgment.

1. Bilzerian et al v Byron et al

- [4] This claim commenced on 20 March 2017 whereby the Claimants sought various orders against the Defendants for damages for breach of fiduciary duty, intentional interference with contractual relations, fraudulent misrepresentation and negligent misrepresentation. The court on 11 May 2017 granted the Claimants an interim injunction preventing the Defendants from interfering with the running or the affairs of two companies with a return date of 12 June 2017. On 24 March 2017, Mr. Adam Bilzerian filed a power of attorney dated 8 May 2015 purporting to appoint Mr. Paul Bilzerian as his "lawful agent to act [for him] in any lawful way with respect to any Claims brought by or against [him] in the Federation of St. Christopher and Nevis" (the "**Power of Attorney**"). Each of the Claimants then filed on 18 April 2017, a notice of unavailability for the period commencing 3 June to 1 August 2017, noting that Mr. Paul Bilzerian will be out of the jurisdiction and therefore unavailable to attend the hearing but was nonetheless available using Skype.
- [5] The First Defendant filed an acknowledgment of service on 7 April 2017 while the Third Defendant filed one on 27 April 2017. The Claimants on 8 May 2017 filed a request for entry of judgment in default against the Defendants. A second request

for judgment in default was filed by the Claimants on 12 May 2017. On 25 May 2017 and 26 May 2017, the First Defendant and Third Defendant respectively applied to strike out the statement of claim. The Claimants on 12 June 2017 filed a notice of application to strike out the application of the First Defendant to strike out the statement of claim. A similar application was filed by the Claimants on 13 June 2017 in respect of the Third Defendant's application to strike out the statement of claim. The First Defendant on 16 October 2017 filed an affidavit in opposition to the Claimants' application filed on 12 June 2017. The Third Defendant filed an application on 19 October 2017 to discharge the interim injunction.

[6] Nothing happened on the file for the next year and a half until the matter came before me on 28 February 2019 on which date the applications were all considered in determining a way forward. At the hearing, Mr. Paul Bilzerian withdrew the request for judgment in default and the two applications to strike out the application to strike out the statement of claim. The court also noted that the request for default judgment was in any event not properly before the court since it should have been made by way of application rather than a request. At the hearing an issue arose as to whether the Power of Attorney should have been stamped in accordance with the Stamps Act CAP 20:40 of the Revised Laws of Saint Christopher and Nevis. The court proceeded to give directions for the filing of submissions and authorities on that issue and also for the filing of evidence and submissions and authorities on the two applications to strike out the statement of claim with a hearing date of 27 March 2019 at 2:00 p.m. to hear the applications. On 4 March 2019, the court office issued a notice of adjourned hearing to indicate that the hearing will take place at 11:00 a.m. rather than 2:00 p.m. Both parties acknowledged receipt of the notice.

[7] Mr. Paul Bilzerian on behalf of the Claimant filed on 11 March 2019, a notice of unavailability for the period 28 March to 11 April 2019, noting that Mr. Paul Bilzerian will be out of the jurisdiction and therefore unavailable to attend the hearing but available using Skype. Two days later, Mr. Paul Bilzerian filed a notice of Application for recusal of Justice Eddy Ventose with supporting affidavit for me

to recuse myself in that matter and other matters in which I had presided involving both of his sons for whom he has acted as attorney of fact and for the companies that he has represented in these proceedings as director (the “**First Recusal Application**”).

- [8] Mr. Paul Bilzerian, who was present at the court hearing on 28 February 2019, filed a document on 15 March 2019, objecting to the directions given by the court on the matters before the court on that date. Mr. Paul Bilzerian on 20 March 2019 filed a notice of application with supporting affidavit to strike out the submissions of the Third Defendant. Mr. Paul Bilzerian on 26 March 2019 filed a notice of application with supporting affidavit to strike out the submissions of the First Defendant. The Third Defendant filed on 22 March 2019: (1) an affidavit with exhibits thereto in opposition to the First Recusal Application; and (2) a reply to the Claimants’ response to the court order made on 28 February 2019.
- [9] The First Defendant duly complied with the order of the court on 28 February 2019 and filed submissions and authorities on 22 March 2019 in respect of whether the Power of Attorney is required to be stamped in accordance with the Stamps Act. The Third Defendant filed on 2 April 2019 an affidavit in opposition to the application by the Claimant to strike out the submissions of the Third Defendant. The Claimants on 8 April 2019 filed an application with supporting affidavit to vacate the order of the court dated 28 February 2019. The matter came up for hearing on 27 March 2019 where the court noted that there was no evidence on file to indicate that Mr. Paul Bilzerian has the authority to represent the Second and Third Claimants in these proceedings and that the parties had not complied with certain aspects of the court’s order of 28 February 2019. The court also gave an unless order for Mr. Paul Bilzerian to file evidence that he has the authority to conduct proceedings on behalf of the companies, failing which the statement of claim would be struck off.
- [10] The court in conducting its research on the question of whether the Power of Attorney must be stamped in accordance with the Stamps Act considered first whether Mr. Paul Bilzerian can act in person for Mr. Adam Bilzerian or Mr. Dan

Bilzerian because the right to act in person seemingly belongs to the individual party, not a third person. As a result, the court requested the parties to: (1) file submissions and authorities on the question of whether Mr. Paul Bilzerian can act in person for his son in civil proceedings in the CPR; and (2) also consider the decision of the Supreme Court of Ireland in **In the Matter of Applications for Orders in Relation to Costs in Intended Proceedings by Coffey and others** [2013] IESC 11 (26 February 2013) (the “**Right of Audience Issue**”). The court proceeded to provide revised directions in respect of the matters before the court. On 9 May 2019, the parties indicated to the court that there was some confusion as to the timelines in its revised directions, so the court gave the parties new further directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue with a date of hearing set for 25 July 2019.

- [11] On 11 June 2019, Mr. Paul Bilzerian filed an application with supporting affidavit for an extension of time to comply with the order of the court dated 9 May 2019 and on 24 May 2019 Mr. Paul Bilzerian filed a second application for recusal of Justice Eddy Ventose (the “**Second Recusal Application**”).

2. Bilzerian et al v Getz et al

- [12] The Claimants filed a claim form on 16 April 2015 against the Defendants seeking damages of US\$750,000.00 jointly and severally for breach of contract of guarantee. The Claimants were initially represented by Dr. Dennis Merchant, Attorney-at-Law. The Third Defendant filed on 21 May 2015 with sworn affidavit an application to strike out the claim form and or an extension of time to file a defence. This application was amended on 10 July 2015. The First and Second Defendants filed a defence on 26 May 2015, which was subsequently amended on 2 July 2015. The First Defendant filed an application with supporting affidavit on 2 July 2015 for an order to remove the First Claimant and add a Defendant to the proceedings and or to strike out the claim form. Mr. Paul Bilzerian, who states that he is not a party to the proceedings, filed on 10 July 2015 an application with

supporting affidavit to adjourn the hearing scheduled for 14 July 2015. The court adjourned the hearing to 6 October 2015.

- [13] The statement of claim was amended on 5 October 2015. The court considered the applications before it on 6 October 2015 and ordered that the claim be struck out and costs to the Defendants. On 7 October 2015, a further order of the court reflects that the court ordered that its order dated 6 October 2015 be recalled as it was not yet perfected and that the basis for striking out the statement of claim had not been cured by the amended statement of claim and ordered that the amended statement of claim be struck off with costs to the Defendants in the sum of \$1,200.00 as agreed. The Claimants then filed on 7 July 2016 a request for entry of judgment in default. On 30 March 2017, Mr. Paul Bilzerian filed a power of attorney dated 11 July 2014 effectively granting him similar powers granted to him in the Power of Attorney.
- [14] The Defendants then filed a Judgment Summons on 6 October 2017 in respect of the costs order awarded against the Claimants. The Claimants filed on 22 February 2018 an application with supporting affidavit for an adjournment of the hearing of the Judgment Summons and an application to vacate the order of 6 October 2015. The court granted the order for an adjournment on 28 February 2018. On 26 November 2018, the Claimant filed an application with supporting affidavit to adjourn the Judgment Summons. On 28 November 2018, the court granted the adjournment the Judgment Debtor sought to 27 February 2019. The order of the court dated 27 February 2019 reflects that the matter was further adjourned to 31 July 2019 for further hearing of the judgment summons. Mr. Paul Bilzerian then filed on 13 March 2019 the First Recusal Application.
- [15] On 9 May 2019, the court gave the parties directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue with a date of hearing set for 25 July 2019. On 11 June 2019, Mr. Paul Bilzerian filed an application with supporting affidavit for an extension of time to comply with the order of the court dated 9 May 2019 and on 24 May 2019 Mr. Paul Bilzerian

filed the Second Recusal Application. Mr. Paul Bilzerian filed on 29 July 2019 another application with supporting affidavit to adjourn the Judgment Summons.

3. Bilzerian et al v Getz et al

- [16] The Claimant, Mr. Dan Bilzerian, filed a claim form on 24 June 2013 seeking various declarations and orders against the Defendants in respect of the unlawful deprivation of water to his permanent residence. Mr. John Tyme initially was the Attorney-at-Law on record for the Claimant. The court on 25 June 2013 granted the Claimant an *ex parte* interim injunction ordering the Defendants to restore the water supply to his condominium and that the *inter partes* hearing be held on 15 July 2013. The pleadings were duly filed, and case management directions given on 26 September 2014.
- [17] A Notice of Acting was filed on 20 February 2015 by Dr. Dennis Merchant, Attorney-at-Law on behalf of the Claimant. The Claimant filed on 26 September 2016 an application to reschedule the trial date set for 7 November 2016, which was granted by the court on 28 October 2016. On 18 April 2017, Mr. Paul Bilzerian filed the Power of Attorney and on 28 April 2017, Dr. Dennis Merchant filed an application to be removed from the record, which was granted by the court on 1 June 2017. The court office issued on 7 January 2019 a notice of status hearing for 28 March 2019 which was acknowledged by the parties. On 11 March 2019, Mr. Paul Bilzerian filed a notice of unavailability for the period 28 March and 11 April 2019 and June 1 to 29 July 2019, noting that he will be out of the jurisdiction and therefore unavailable to attend the hearing but available using Skype. The Claimant filed on 13 March 2019 the First Recusal Application. When the matter came up for status hearing on 28 March 2019, the court gave the parties directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue with a date of hearing set for 25 July 2019. Mr. Paul Bilzerian filed on 7 May 2019 an application with supporting affidavit to vacate the order of the court dated 28 March 2019. On 9 May 2019, the court gave the parties revised directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue with a date of hearing set for 25

July 2019. On 11 June 2019, Mr. Paul Bilzerian filed an application with supporting affidavit for an extension of time to comply with the order of the court dated 9 May 2019 and on 24 May 2019 Mr. Paul Bilzerian filed the Second Recusal Application.

4. Bilzerian v Horstwood

- [18] This matter is a consolidated one involving Mr. Adam Bilzerian and Mr. Kevin Horstwood. The Claimant filed on 5 March 2019 an urgent application with supporting affidavit for the court to set a trial date. The Claimant then filed on 13 March 2019, the First Recusal Application. On 9 May 2019, the court gave the parties directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue with a date of hearing set for 25 July 2019. On 11 June 2019, Mr. Paul Bilzerian filed an application with supporting affidavit for an extension of time to comply with the order of the court dated 9 May 2019 and on 24 May 2019 Mr. Paul Bilzerian filed the Second Recusal Application.

5. First Caribbean International Bank (Barbados) Limited v Caribbean Building Systems (St. Kitts) Limited

- [19] This matter relates to an application filed on 28 January 2013 by the Claimant against the Defendant for an order under section 75 of the Title by Registration Act CAP 10:19 of the Revised Laws of Saint Christopher and Nevis to settle the Articles of Sale of a parcel of land owned by the Defendant. There have been too many applications in this matter to bear repeating all of them here. Later in this judgment, some of them will be examined at the appropriate time. On 7 April 2017, the Defendant, a company, filed a notice of acting in person by its director, Mr. Gregory Gilpin-Payne. Nothing happened on this file afterwards until 21 January 2019 when a notice of sale was filed by the Claimant and signed by the Registrar of the High Court on 11 February 2019 for the sale of the property on 25 April 2019.
- [20] On 13 March 2019, Mr. Paul Bilzerian filed the First Recusal Application. On 9 May 2019, the court gave the parties directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue

with a date of hearing set for 25 July 2019. On 11 June 2019, Mr. Paul Bilzerian filed an application with supporting affidavit for an extension of time to comply with the order of the court dated 9 May 2019 and on 27 May 2019 Mr. Paul Bilzerian filed the Second Recusal Application.

6. First et al v Gilpin-Payne et al

- [21] The Claimants filed on 11 March 2016 a claim for damages for libel against the Defendants. The claim was amended on 26 October 2016. Many applications including one relating to security for costs and an extension of time to file a defence was heard and decided by the court in the matter. On 7 April 2017, the Second Defendant, a company, filed a notice of acting in person by its director, Mr. Gregory Gilpin-Payne.
- [22] Mr. Paul Bilzerian on behalf of the Second Defendant filed on 18 April 2017, a notice of unavailability for the period 3 June to 1 August 2017, noting that the Second Defendant, which is acting in person through its director, Mr. Paul Bilzerian, will be out of the jurisdiction and therefore unavailable to attend the hearing except using Skype. On 28 April 2017, Dr. Dennis Merchant filed an application to be removed from the record for the Second Defendant, which was granted by the court on 1 June 2017. The court office issued on 24 October 2018 a notice of hearing for trial directions to be held on 15 November 2018. The notice was served on Merchant and Associates, the former Counsel for the Second Defendant. At the hearing on 15 November 2018, the parties were absent and only Counsel for the Claimants was in attendance. The court was informed that any extant appeal was already dismissed and that the notice was not served on the Defendants as they were now acting in person. As a result, the court adjourned the matter to 29 November 2018. All the parties acknowledged receipt of the notice of hearing issued by the court on 16 November 2018.
- [23] On 26 November 2018, the Defendants filed an application with supporting affidavit for an order cancelling the hearing on 15 November 2018. The basis of the application was that Mr. Paul Bilzerian left the jurisdiction to join his wife and grandchildren on a trip to Orlando to visit Disneyworld. On 29 November 2018, the

court adjourned the matter to 18 December 2018. Mr. Paul Bilzerian on behalf of the Second Defendant filed on 3 December 2018, a notice of unavailability for the period 17 December 2018 to 16 January 2019, noting that the Second Defendant, which is acting in person through its director, Mr. Paul Bilzerian, will be out of the jurisdiction and therefore unavailable to attend the hearing except using Skype. The Defendants filed on 13 December 2018 an application with supporting affidavit to cancel the hearing on 18 December 2018. The matter arose again on 7 March 2019, at which point the court gave directions for trial in the matter. Mr. Paul Bilzerian attended on behalf of the Second Defendant but the First Defendant was absent.

- [24] Mr. Paul Bilzerian on behalf of the Second Defendant filed on 11 March 2019, a notice of unavailability for the period 28 March 2019 to 11 April 2019, noting that the Second Defendant, which is acting in person through its director, Mr. Paul Bilzerian, will be out of the jurisdiction and therefore unavailable to attend the hearing except using Skype. On 13 March 2019, the Second Defendant filed the First Recusal Application. On 9 May 2019, the court gave the parties directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue with a date of hearing set for 25 July 2019. On 11 June 2019, Mr. Paul Bilzerian filed an application with supporting affidavit for an extension of time to comply with the order of the court dated 9 May 2019 and on 27 May 2019 Mr. Paul Bilzerian filed the Second Recusal Application.

7. Weiner et al v Bilzerian

- [25] The Claimants filed a claim in 2012 against the Defendant seeking specific performance of an agreement dated 8 April 2010 by which the Defendant agreed to discharge a promissory note entered previously between the parties in 2009 in exchange for a non-recourse mortgage against a condominium owned by the Defendant for US\$1,100,000.00, an order directing the Defendant to execute and convey to the Claimants a memorandum of Mortgage capable of recordation under the Title by Registration Act CAP 10:19 of the Revised Laws of Saint Christopher and Nevis, or alternatively the sum of US\$1, 259, 712,00 being the amount due

and owing under the 2009 promissory note, and damages for breach of contract. At trial held on 13 November 2017, the trial judge found in favour of the Claimants and ordered the Defendant to execute and convey to the Claimants a memorandum of Mortgage capable of recordation under the Title by Registration Act and ordered costs in favour of the Claimants.

- [26] The Defendant filed on 27 November 2017 an application with supporting affidavit to set aside the judgment given in a party's absence and on 5 December 2017 filed an application to stay execution of the judgment pending the decision on the application to set aside the judgment. The Claimants filed on 16 January 2018 an application with supporting affidavit for an order directing the Registrar of the High Court to execute and deliver to the Claimants a memorandum of Mortgage capable of recordation under the Title by Registration Act CAP 10:19 of the Revised Laws of Saint Christopher and Nevis. Both parties subsequently filed affidavits opposing each other's respective applications. The Claimants then filed an application with supporting affidavit for an unless order preventing the Defendant from taking further steps in these proceedings unless he complied with four (4) costs orders of the court.
- [27] On 27 December 2018, the court office issued a notice in relation to the application for the unless order and the application to strike to be heard on 28 February 2019 at 2:00 pm. The notice was acknowledged by the Defendant. On 28 February 2019, the Claimant wrote to the Registrar objecting to the change of time to 9:00 a.m. on the same date. On the date of hearing, Mr. Paul Bilzerian attended, and the court gave directions for all the pending applications that were before it.
- [28] On 13 March 2019, the Defendant filed the First Recusal Application. On 14 March 2019, the Defendant filed an application to strike out the affidavit in opposition to the application to set aside the judgment given in a party's absence and to stay execution of that judgment; and (2) an application for enlargement of time to file submissions in support of the application to set aside the judgment given in a party's absence and to stay execution of the judgment and request for a hearing.

The two applications were not supported by evidence on affidavit. On 21 March 2019, the Defendant filed a response to the court order made on 28 February 2019 and a request for a hearing. On 9 May 2019, the court gave the parties directions for filing submissions and authorities on the First Recusal Application and on the Right of Audience Issue with a date of hearing set for 25 July 2019. On 11 June 2019, Mr. Paul Bilzerian filed an application with supporting affidavit for an extension of time to comply with the order of the court dated 9 May 2019 and on 21 May 2019 Mr. Paul Bilzerian filed the Second Recusal Application.

The Recusal Application

- [29] In relation to **Bilzerian et al v Getz et al**, the record shows that Mr. Paul Bilzerian was in fact heard and the matter was adjourned, and that no decisions were made on the date of hearing. Before Mr. Paul Bilzerian entered the court, the matter was called but there was no appearance at that time, so Counsel for the Judgment Debtor explained the status of the matter to the court. Usually, at the hearing for judgment summons, most judgment debtors would normally be sworn in before the court can hear them on the summons before it. Mr. Paul Bilzerian was duly sworn in and it was only after a few minutes the court realized he was not Mr. Dan Bilzerian, the Judgment Debtor. Mr. Paul Bilzerian was allowed to address the court but focused on matters which were not before the court, namely, the striking out of his son's amended statement of claim by the court, a matter that he claimed he had appealed to the Court of Appeal. The court, after hearing the oral submissions of Counsel for the Defendant and the evidence of Mr. Paul Bilzerian, granted the adjournment requested by Mr. Paul Bilzerian.
- [30] In **Weiner et al v Bilzerian**, Mr. Paul Bilzerian complained that he did not receive the notice of the change of time from 2:00 p.m. to 9:00 a.m. Mr. Paul Bilzerian also states, in his letter to the Registrar of the High Court dated 28 February 2019, that "[t]rial by ambush and a lack of due process should never be allowed in a legal system adopted by any civilized society under the British Commonwealth". Mr. Paul Bilzerian fails to note that the hearing was to give directions on the matters before the court, that he attended the hearing and the court did not deal with any

substantive matters on that hearing date. He complains that the court gave an "extremely aggressive briefing schedule" by which he means the court gave the parties a tight but reasonable time period within which to file evidence, submissions and authorities on the applications that were before it. Mr. Paul Bilzerian did not object to this at the hearing. The court heard Mr. Paul Bilzerian and granted him the adjournment he requested; and gave directions for the Claimants to file submissions and authorities on their application and gave other directions on the matters before the court; and the court apologized for any inconvenience in relation to the notice of hearing; and no decisions were made on that date of hearing. The court is granted the power under the CPR to deal with applications before it and Mr. Paul Bilzerian had every opportunity to address the court and did not object to any of the directions given by the court on that date.

- [31] Mr. Paul Bilzerian cannot complain that he was not heard because the court, on the date of hearing, did not hear any of the parties on the substantive applications before it but merely adjourned the proceedings to allow the parties to submit written submissions. There cannot be any doubt that the right to be heard is satisfied if a party is allowed to make written representations. Moreover Mr. Paul Bilzerian participated in the hearing in what amounted to a hearing on directions. Mr. Paul Bilzerian accepted that his office was informed of the change of the time of the hearing and he has not provided any evidence of prejudice to himself or the actual party to the proceedings, Mr. Adam Bilzerian. Since the notice of hearing did not specifically outline the matters which were to be heard before the court, the court informed the parties that the matter would be heard on paper, and Mr. Paul Bilzerian raised no objection to that manner of proceeding or to the directions given by the court. In fact, during the hearing Mr. Paul Bilzerian explained that both parties had written several letters to the Registrar of the High Court to have the matters listed. Mr. Paul Bilzerian did not object to any of the timelessness given by the court. The court gave various orders including an order that if evidence was not filed by a certain date, the court would proceed to determine the applications on the evidence before it by the deadline for filing evidence. The court explained the effect of the order to Mr. Paul Bilzerian who responded that he understood,

that three weeks was fine and that if he did not file the court should consider the application on the papers. There is no question that the court has the power pursuant to CPR 26.1(2)(n) to, instead of holding an oral hearing, deal with a matter on written representations.

[32] In **Bilzerian et al v Horstwood**, Mr. Paul Bilzerian, who was present for the proceedings, on 28 February 2019, objected on the basis of late or no notice of hearing. It was remarkable that Mr. Paul Bilzerian would complain of getting no notice of hearing when he was in actual attendance at the hearing. And, since the court did not deal with any substantive matter at what essentially was a directions hearing, the late notice, which is to be regretted, did not prejudice Mr. Paul Paul Bilzerian (as there was essentially nothing for which to prepare) or Mr. Adam Bilzerian or any of the Claimants. Mr. Paul Bilzerian nonetheless participated in the proceedings by withdrawing a request for judgment in default of defence and his applications to strike out the application to strike out the statement of claim. Mr. Paul Bilzerian commented in relation to another matter (SKBHCV2011/0320) that was not before the court requesting that it should be given priority for trial. The court did not have the file for that matter, was not familiar at that time with the issue in that matter, or its relationship with the current matter; and neither did Mr. Paul Bilzerian properly explain the relationship between the matter before the court and Claim No. SKBHCV2011/0320. The court heard him on that issue but proceeded to conduct the hearing in respect of the manner to deal with the various procedural applications before the court.

[33] The issue of stamping the Power of Attorney arose at the hearing and the court gave directions on that issue, and also gave directions for the filing of evidence and submissions and authorities on the various applications before the court. On 27 March 2019, the date of hearing of the applications, the parties had not complied with some aspects of the order of the court dated 28 February 2019, so the court gave new timelines within which to comply with the directions previously given, including the filing of submissions and authorities on the Right of Audience Issue.

- [34] In **Lemongrove Company Limited et al v Registrar of Companies**, the court granted two orders, first, "1. subject to compliance with paragraph 2, the application for leave to apply for judicial review is stayed pending the determination of the matter in SKBHCV 2011/0320. 2.Unless the Claimant complies with the order of the court on 24 July 2017 within 21 days of today's date, the application shall stand dismissed.". The matter was subsequently discontinued by Mr. Paul Bilzerian.
- [35] In **First et al v Gilpin-Payne et al**, a notice dated 19 November 2018 was issued by the court office, which was signed, as received, by all the parties, for trial directions to be given on 29 November 2018. On that date, since all parties were absent and only Counsel for the Claimants was present, the matter was adjourned to 29 November 2018. The parties being absent on the adjourned date with only Counsel for the Claimant present, the matter was further adjourned to 18 December 2018; and on 7 March 2019, the court gave trial directions in the matter. Mr. Paul Bilzerian attended for the Second Defendant. The First Defendant was absent. Mr. Paul Bilzerian did not object to the court giving directions for the trial at that hearing.
- [36] In **Bilzerian v Getz et al, Bilzerian v Hortsford and First Caribbean International Bank (Barbados) Limited v Caribbean Building Systems (St. Kitts) Limited**, no hearing took place in relation to these matters prior to the filing of the First Recusal Application.

A Pattern of Recusal Applications

- [37] This is not the first time that a recusal application has been filed by Mr. Paul Bilzerian or his legal representatives in the High Court of Saint Christopher and Nevis. He has made three unsuccessful recusal applications in relation to judicial officers in the High Court of Saint Christopher and Nevis.
- [38] In **First Caribbean International Bank (Barbados) Limited v Caribbean Building Systems (St. Kitts) Limited**, the Defendant on 20 December 2013 filed an application with supporting affidavit for Master Lanns to recuse herself in the

proceedings. It will be remembered that Mr. Paul Bilzerian is a director of the Defendant company. In **Bilzerian v Horstwood**, the Claimant filed on 5 February 2016 an application with supporting affidavit for Justice Carter to reuse herself from proceeding in every case in which Mr. Adam Bilzerian is a party and in other cases involving Mr. Adam Bilzerian or his companies. In **Bilzerian v Horstwood**, the Claimant filed on 27 February 2017 an application with supporting affidavit for Justice Ward to recuse himself in that case and in all other cases involving Mr. Adam Bilzerian. It is worth noting that the applications for recusal of Justices Carter and Ward uses a remarkably similar template to the one in respect of the First Recusal Application.

The Correct Test to be Applied

[39] In **Harb v Prince Abdul Aziz bin Fahd bin Abdul Aziz** [2016] All ER (D) 102 (Jun), the Court of Appeal of England and Wales stated:

69. As we have said, the legal test is not in doubt: see para 54 above. We would, however, emphasise two important points. First, the opinion of the notional informed and fair-minded observer is not to be confused with the opinion of the litigant. The “real possibility” test is an objective test. It ensures that there is a measure of detachment in the assessment of whether there is a real possibility of bias ... But the litigant is not the fair-minded observer. He lacks the objectivity which is the hallmark of the fair-minded observer. He is far from dispassionate. Litigation is a stressful and expensive business. Most litigants are likely to oppose anything that they perceive might imperil their prospects of success, even if, when viewed objectively, their perception is not well-founded.

72. Secondly, the informed and fair-minded observer is to be treated as knowing all the relevant circumstances and it is for the court to make an assessment of these: [and] that the hypothetical fair-minded observer is to be treated as if in possession of all the relevant facts and not only those that are publicly available.

[40] In **Dobbs v Triodos Bank NV** [2005] EWCA Civ 468, the Court of Appeal of England and Wales also stated that:

7. It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know

that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant -- whether it be a represented litigant or a litigant in person -- criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised -- whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard.

- [41] A very strong Court of Appeal of England and Wales in **Locabail (UK) Ltd v Bayfield Properties Ltd** [2000] QB 451 comprising Lord Bingham of Cornhill C.J., Lord Woolf M.R. and Sir Richard Scott V.-C. accepted that "as a general rule, it is the duty of a judicial officer to hear and determine the cases allocated to him or her by his or her head of jurisdiction. Subject to certain limited exceptions, a judge or magistrate should not accede to an unfounded disqualification application". The Court of Appeal in **Locabail** approved a passage from the judgment of the Constitutional Court of South Africa in **President of the Republic of South Africa v South African Rugby Football Union**, 1999 (4) S.A. 147 where the Constitutional Court stated (at p. 177) that:

It follows from the foregoing that the correct approach to this application for the recusal of members of this court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of

any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.”

- [42] The test for apparent bias was restated by Lord Hope in **Porter v Magill** [2001] UKHL 67, [2002] 1 All ER 465 at [103], namely, “[t]he question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased”. It seems plain from above that Mr. Paul Bilzerian is using the recusal application, among his usual armory of weapons, in his quest to frustrate litigants, delay or stall the hearing of applications and the trial in the various matters before the court. Various courts over the years have had to note that Mr. Paul Bilzerian files a plethora of unrelenting applications before the court often with lightening speed. This was noted by Master Actie when she stated that “[t]he parties in the matters are well known for the many interlocutory applications” (**Bilzerian v Hortsford** SKBHCV2011/0320 and SKBHCV 2016/0311 dated 15 November 2017). Lanns J. (Ag) in one of the many decisions on the various applications filed on these matters remarked that these are tantamount to a form of abuse of the court’s processes and certainly a waste of the court’s time and resources (**Bilzerian v Hortsford** SKBHCV2011/0320 and SKBHCV 2016/0311 dated 11 September 2018).
- [43] In light of the facts outlined above, the reasonable and informed observer would be aware that: (1) Mr. Paul Bilzerian is a person with a power of attorney for his two sons; (2) Mr. Paul Bilzerian is representing various companies (a separate legal person) in proceedings before the court without legal representation by an Attorney-at-Law; (3) Mr. Paul Bilzerian is purporting to act as a litigant in person when he is not a party to any of the proceedings; (4) Mr. Paul Bilzerian has made three previous unsuccessful applications for recusal of judicial officers in this jurisdiction, including Master Lanns (2013), Justice Carter (2016) and Justice Ward (2017) and now myself (2019); (5) CPR 26.1(2) gives the court the power to:

(a) adjourn or bring forward a hearing to a specific date; and (b) decide the order in which issues are to be tried; (6) CPR 26.2(2) gives the court the power to make orders of its own initiative but must give any party likely to be affected a reasonable opportunity to make representations; (7) in none of the matters about which Mr. Paul Bilzerian complains did the court make any decisions that were adverse to the interests of his sons or the companies of which he is a director; (8) in most, if not all, of the matters the court adjourned the hearing at the instance of Mr. Paul Bilzerian; (9) the court gave directions for the hearing of the many long standing applications before it at most of the hearings in the matters above; and (10) Mr. Paul Bilzerian did not complain about the directions given by the court at those hearings.

[44] It would have been quite easy for me to succumb to the temptation simply to recuse myself because it would be more comfortable to do so. No judge wishes to be criticized by parties or by the court of appeal for any actions taken by them in the course of proceedings. However, this is not the test to be applied in such cases. It is not a matter for the judicial officer to determine one way because it is simply the easier way, and perhaps in recusing oneself there would be no appeal. It is unacceptable if this could ever be the basis on which a decision to recuse is made. I agree with the court in **Dobbs** when it stated that if judges were to recuse themselves whenever a litigant -- whether it be a represented litigant or a litigant in person -- criticized them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticizing all the judges that they did not want to hear their cases. It is clear that this is what Mr. Paul Bilzerian has done and intends. This is his fourth application for recusal of a judicial officer in this jurisdiction. I suspect unless restrained (particularly in light of the next issue), Mr. Paul Bilzerian will continue to abuse the process of the court by making such unfounded applications devoid of any merit whatsoever.

[45] In all the circumstances, Mr. Paul Bilzerian has not provided any evidence to show that the fair minded and informed observer, having regard to all the

circumstances, will conclude that there is a real possibility that I will be biased in relation to any or all of the matters of which he complains. Mr. Paul Bilzerian even after filing the First Recusal Application filed the Second Recusal Application essentially submitting that by requiring the parties to file evidence and submissions on the First Recusal Application and by giving directions on the Right of Audience issue, an issue he alleged the court created, that I should further disqualify myself from proceeding in the various matters. It is clear that: (1) while I agree that the issue of whether a judge should recuse himself or herself is a matter for the judge alone, no harm is done by requiring the parties to file evidence and submissions on the issue. In fact, in two of the affidavits filed, the court was better able to recollect matters that transpired during the proceedings of which Mr. Paul Bilzerian complains, and second, the authorities filed have assisted the court greatly in answering the question of whether the matters as alleged by Mr. Paul Bilzerian mean that the fair minded and informed observer, having regard to all the circumstances, will conclude that there is a real possibility that I will be biased; (2) the court is granted the undoubted power through its inherent jurisdiction to control its proceedings and pursuant to its powers of case management under CPR 26 to order the parties to file submissions on any issue the court believes is important having regard to the conduct of the proceedings before it; and (3) that it was proper for the court, having found a relevant decision on the Right of Audience issue, to direct all the parties to consider whether that case is applicable to the issue that the court will consider. The right to natural justice plainly requires this.

- [46] It must be noted that Mr. Paul Bilzerian did not file any submissions or authorities as ordered by the court on 9 May 2019 but merely filed on 11 June an application for an extension of time to comply with that order. Once again, Mr. Paul Bilzerian, without any proper justification, fails to comply with an order of the court and routinely files applications for extensions of time merely to delay further the proceedings. There is no question that this is the way that he has conducted the litigation on behalf of his sons, Mr. Adam Bilzerian and Mr. Dan Bilzerian, and for the companies of which he is a director. I pause to note that it would seem odd to the reader that I would refer to Mr. Paul Bilzerian, a person who is not admitted to

practice as an Attorney-at-Law in the Federation of Saint Christopher and Nevis, as a person who has conducted litigation in these matters before the court, and many others. The First and Second Application for Recusal have no merit and are hereby dismissed.

The Right of Audience before the Court

- [47] As mentioned above, Mr. Paul Bilzerian is the father of Mr. Dan Bilzerian and Mr. Adam Bilzerian. Mr. Dan Bilzerian and Mr. Adam Bilzerian are parties to multiple actions in the High Court of Saint Christopher and Nevis. Mr. Paul Bilzerian is a director of various companies that are parties to proceedings in this jurisdiction. Mr. Paul Bilzerian acts on behalf of both of his sons pursuant to Powers of Attorney granted to him by both sons as their lawful agent to act for them in any lawful way with respect to any claims brought by or against them in the Federation of St. Christopher and Nevis. Pursuant to the Powers of Attorney granted to him, Mr. Paul Bilzerian filed, in every matter in which his sons are parties, a notice of intention to act in person.
- [48] A litigant in person is an **individual party** to proceedings before the court who decides to conduct the litigation by himself or herself without the need to be represented by an Attorney-at-Law. That right is granted to that party himself or herself; it cannot be exercised by anyone else. The right of an individual litigant to represent himself or herself in person is a derogation of the right of legal practitioners only to represent parties in proceedings before the court. While I note that Mr. Paul Bilzerian has been purporting to act as a litigant in person for over two years in proceedings before the High Court and the Court of Appeal, that alone does not automatically confer upon him the right to so appear since he does not in fact have a right to appear as a litigant in person to represent his sons in the manner in which he has done for the last two years. No doubt any individual may grant a power of attorney to another to oversee litigation on their behalf and this can include engaging legal representation for the individual or attending proceedings on behalf of that individual and making certain decisions (communicating to the court through an attorney at law or where applicable directly

to the court) in respect of the manner in which the litigation is conducted. This is exactly what the Court of Appeal stated in its oral judgment dated 13 March 2018 in the consolidated matters of **Bilzerian v Weiner et al** (SKBHCVAP 2016/0019) and **Bilzerian v Weiner** (SKBHCVAP 2016/0021) as follows:

There is the issue of Paul Bilzerian's role in the trial. He is not a party to the proceedings, he is not a lawyer or witness in the case. His role is advise the lawyer who is to advocate the matter.

- [49] That power of attorney, however broadly drafted, cannot confer a right on that person to act in person for that party. It defies belief that this was allowed to happen and for so long. A litigant in person means what it says – that the person, who is a litigant, can appear on his on her own behalf, without the need to be represented by an Attorney-at-Law, in civil proceedings. That right does not extend to anyone else other than the individual party to the proceedings. In fact, the forms in the CPR recognize that a litigant may from the commencement of civil proceedings represent himself or herself. The CPR recognizes the right of a party who was previously represented by an Attorney-at-Law to decide to represent himself or herself. In such a case, a notice of acting in person must be filed. CPR 63.4 provides that:

Party acting in person

63.4 If a party who has previously been represented by a legal practitioner decides to act in person, that party must –

- (a) file notice of acting in person at the court office which states the address, an address for service within the jurisdiction, telephone number and FAX number (if any) of that party;
- (b) serve a copy of the notice on every other party and the former legal practitioner; and (c) file a certificate of service.

- [50] Mr. Paul Bilzerian, pursuant to CPR 63.4, purported to file a notice of acting in person in the various matters although he was not the **party** who was previously represented by a legal practitioner and who has decided to act in person. Since filing the notice of acting in person, Mr. Paul Bilzerian has acted as solicitor and advocate without restriction on behalf of his sons and the companies of which he is a director. He has exercised a surprisingly unrestricted right of audience before

the High Court of Saint Christopher and Nevis and has acted to all intents and purposes as if he were a person qualified to practice and admitted to practice as an Attorney-at-Law in Saint Christopher and Nevis

[51] Chief Justice Lord Tenterden in **Collier v Hicks** (1831) 2 B. & Ad. 663 stated that:

Any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice; but no one can demand to take part in the proceedings as an advocate, contrary to the regulations of the court as settled by the discretion of the justices.

[52] In **In the Matter of Applications for Orders in Relation to Costs in Intended Proceedings by Coffey and others** [2013] IESC 11 (26 February 2013), the Supreme Court of Ireland had to consider an application by a person, who was neither a solicitor nor counsel or a party to the proceedings, to represent litigants in proceedings before the High Court. In rejecting the application, the Supreme Court explained that:

23. The fundamental rule is that the only persons who enjoy a right of audience before our courts are the parties themselves, when not legally represented, a solicitor duly and properly instructed by a party and counsel duly instructed by a solicitor to appear for a party. That rule does not exist for the purpose of protecting a monopoly of the legal professions. Kennedy C.J. considered an application, In the matter of the Solicitors (Ireland) Act, 1898 and in the matter of an application by Sir James O'Connor [1930] 1 I.R. 623 at page 629, for the readmission to the roll of solicitors of a person who had formerly practised as both a solicitor and a barrister before being appointed to the bench from which he had retired. That issue is not before the Court and I express no view on the issue of readmission of former members of a profession. It is of interest, however, that the Chief Justice explained that one of the points of view of relevance was that "of the public—of the people from whom ultimately are derived and held,.....as a privilege the monopoly of the right to practise as solicitors and advocates," The limitation of the right of audience to professionally qualified persons is designed to serve the interests of the administration of justice and thus the public interest.

24. The exclusive right of counsel to audience in the courts is derived from the common law. In order to extend that right, in the case of the superior courts, to solicitors, it was necessary to enact s. 17 of the Courts Act 1971, which provides:

"A solicitor who is acting for a party in an action, suit, matter or criminal proceedings in any court and a solicitor qualified to practise (within the meaning of the Solicitors Act, 1954) who is acting as his assistant shall have a right of audience in that court."

25. Thus, the right of audience is regulated by law. It is true that a party to proceedings (other than a corporation) has the right to appear for him or herself and to plead his or her own case. This is a matter of necessity as well as right. Regrettably it is a fact of life especially during the current economic difficulties in our country that many people are unable to afford the often high cost of professional representation and that the availability of legal aid is limited. There are other cases where litigants disagree with their lawyers or are unwilling to accept representation. Whatever the reason, there is an inevitable number of cases before the courts where litigants are unrepresented. In those cases, they have the right to represent themselves. It has to be accepted that this is sometimes unavoidable, which is not to say that it is desirable. There is no doubt that courts are better able to administer justice fairly and efficiently when parties are represented.

26. In *R.B. v A.S.* [2002] 2 IR 428 at 447, Keane C.J. remarked on the difficulties presented by the necessity to deal with litigants in person:

"The conduct of a case by a lay litigant naturally presents difficulties for a trial court. Professional advocates are familiar with the rules of procedure and practice which must be observed if the business of the courts is to be disposed of in as expeditious and economic a manner as is reconcilable with the requirements of justice. That is not necessarily the case with lay litigants. Advocates, moreover, are expected to approach cases with a degree of professional detachment which assists in their expeditious and economic disposition: one cannot expect the same of lay litigants, least of all in family law cases.

The trial of cases involving lay litigants thus requires patience and understanding on the part of trial judges. They have to ensure, as best they can, that justice is not put at risk by the absence of expert legal representation on one side of the case. At the same time, they have to bear constantly in mind that the party with legal representation is not to be unfairly penalised because he or she is so represented. It can be difficult to achieve the balance which justice requires and the problem is generally at its most acute in family law cases, such as the present."

27. Sir John Donaldson M.R. in *Abse and Others v Smith* [1986] 2 W.L.R. 322 remarked on the benefits for the administration of justice from the competent representation of parties. At pages 326 to 327 of his judgment he referred to the limitation of rights of audience to qualified persons:

"These limitations are not introduced in the interests of the lawyers concerned, but in the public interest. The conduct of litigation in terms of presenting the contentions of the parties in a concise and logical form, deploying and testing the evidence and examining the relevant law demands professional skills of a high order. Failure to display these skills will inevitably extend the time needed to reach a decision, thereby adversely affecting other members of the public who need to have their disputes resolved by the court and adding to the cost of the litigation concerned. It may also, in an extreme case, lead to the court reaching a wrong decision."

28. The Master of the Rolls also made some remarks, with which I agree, concerning the essential qualities of probity and integrity expected of qualified members of the legal profession and how important it is to the fairness and efficiency of the administration of justice. He said:

"The public interest requires that the courts shall be able to have absolute trust in the advocates who appear before them. The only interest and duty of the judge is to seek to do justice in accordance with the law. The interest of the parties is to seek a favourable decision and their duty is limited to complying with the rules of the court, giving truthful testimony and refraining from taking positive steps to deceive the court. The interest and duty of the advocate is much more complex, because it involves divided loyalties. He wishes to promote his client's interests and it is his duty to do so by all legitimate means. But he also has an interest in the proper administration of justice, to which his profession is dedicated, and he owes a duty to the court to assist in ensuring that this is achieved. The potential for conflict between these interests and duties is very considerable, yet the public interest in the administration of justice requires that they be resolved in accordance with established professional rules and conventions and that the judges shall be in a position to assume that they are being so resolved. There is thus an overriding public interest in the maintenance amongst advocates not only of a general standard of probity, but of a high professional standard, involving a skilled appreciation of how conflicts of duty are to be resolved.

These high standards of skill and probity are not capable of being maintained without peer leadership and pressures and appropriate disciplinary systems and the difficulty of maintaining them increases with any increase in the size of the group who are permitted to practise advocacy before the courts."

29. It would be inimical to the integrity of the justice system to open to unqualified persons the same rights of audience and representation as are conferred by the law on duly qualified barristers and solicitors. Every

member of each of those professions undergoes an extended and rigorous period of legal and professional training and sits demanding examinations in the law and legal practice and procedure, including ethical standards. Barristers and solicitors are respectively subject in their practice to and bound by extensive and detailed codes of professional conduct. Each profession has established a complete and active system of profession discipline. Members of the professions are liable to potentially severe penalties if they transgress.

30. There would be little point in subjecting the professions to such rules and requirements if, at the same time, completely unqualified persons had complete, parallel rights of audience in the courts. That would defeat the purpose of such controls and would tend to undermine the administration of justice and the elaborate system of controls.

37. In conclusion, the general rule is clear. Only a qualified barrister or solicitor has the right, if duly instructed, to represent a litigant before the courts. The courts have, on rare occasions, permitted exceptions to the strict application of that rule, where it would work particular injustice. The present case comes nowhere near justifying considering the making of an exception. Mr. Podger seeks nothing less than the general right to appear on behalf of a group of thirteen litigants and to plead their cases to precisely the same extent as if he were a solicitor or counsel, which he accepts that he is not, but without being subject to any of the limitations which would apply to professional persons.

- [53] The intricate system of legal education in the Commonwealth Caribbean established approximately 50 years ago in 1970 and the legal profession in Saint Christopher and Nevis would be turned on its head if Mr. Paul Bilzerian can continue to be allowed an unrestricted right of audience before the High Court of the Eastern Caribbean Supreme Court which he has been allowed to exercise for over two years. It is time for it to end. Our system of legal education requires compulsory academic training leading to the award of the LLB degree at the Faculty of Law at the three Campuses of the University of the West Indies followed by practical professional training at one of the three Law Schools of the Council of Legal Education. Subject to satisfying certain criteria a holder of the Certificate of Legal Education issued by the Council of Legal Education is entitled to be admitted as an Attorney-at-Law in the countries that are parties to the Treaty Establishing the Council of Legal Education.

- [54] If Mr. Paul Bilzerian is allowed this unrestricted right of audience in the court in the manner to which he has become accustomed over the last two years, it would mean that any party to civil proceedings could simply grant a power of attorney to any another person, even a person who is either: (a) disqualified to practice law in this jurisdiction or elsewhere; or (b) convicted of serious criminal offences in any jurisdiction, thereby allowing that person to appear as a litigant in person for that party without any reference to the legal requirements to be admitted to practice as an Attorney-at-Law in Saint Christopher and Nevis under the Legal Profession Act, No. 33 of 2008.
- [55] Both Mr. Adam Bilzerian and Mr. Dan Bilzerian have the right to appear in person to represent themselves as a litigant in person, but that right cannot be exercised by any other person. Mr. Paul Bilzerian cannot represent Mr. Adam Bilzerian or Mr. Dan Bilzerian as a litigant in person. They can instruct, as they have done in the past, an Attorney-at-Law qualified and admitted to practice law in Saint Christopher and Nevis to represent them in proceedings before the court. Consequently, Mr. Paul Bilzerian is hereby prohibited from representing in person his sons in civil proceedings before this court.

Eddy D. Ventose
High Court Judge

By the Court

Registrar