EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

TERRITORY OF THE VIRGIN ISLANDS

BVIHCVAP2019/0001

BETWEEN:

ASIYAH GRANT

Appellant

and

JAVIER MADURO

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE — Chief Justice
The Hon. Mr. Davidson Kelvin Baptiste — Justice of Appeal
The Hon. Mr. Eamon H. Courtenay, SC — Justice of Appeal [Ag.]

Appearances:

Mr. Gerard St. C. Farara, QC, with him, Ms. Gurprit Mattu for the Appellant
Ms. Asha Johnson-Willins for the Respondent

2019: July 18,
November 13.

Interlocutory Appeal – Civil Appeal – Motor Vehicle Insurance (Third-Party Risks) Ordinance – Section 11A(1) – Statutory Interpretation – Section 4(1)(a) of the Limitation Ordinance – Limitation period for negligence claims involving motor vehicles accidents – Whether negligence claim statute barred by section 11A(1) of the Motor Vehicle Insurance (Third-Party Risks) Ordinance – Whether learned master erred in striking out appellant's claim on the basis of it being statute barred – Purposive interpretation – Marginal and explanatory notes as interpretive tools – Sections 12(2), 42(2) and 42(3) of the Interpretation Act

On 1st February 2014, the appellant, Asiyah Grant ("Ms. Grant"), was struck down by a motor vehicle driven by the respondent, Javier Maduro ("Mr. Maduro"). Ms. Grant sustained injuries for which she required prolonged post-operative therapy and substantial medical treatment both locally and overseas. On 15th June 2018, over four years later, Ms.

Grant instituted proceedings in the High Court against the respondent claiming damages for negligence flowing from the injuries she suffered. On 28th August 2018, Mr. Maduro filed an application to strike out the appellant's claim pursuant to rule 26.3(1)(b) of the Civil Procedure Rules 2000 on the basis that the claim was time-barred by section 11A(1) of the Motor Vehicle Insurance (Third Party Risks) Ordinance (the "MVIO") and therefore an abuse of process. The strike-out application was heard on 3rd October 2018. The learned master, found that section 11A(1) imposed a three-year limitation period on all claims involving injury or damage resulting from motor vehicles required to be insured under the MVIO, including Ms. Grant's claim against Mr. Maduro for negligence at common law. Accordingly, the master struck out Ms. Grant's claim, and entered summary judgment in favour of Mr. Maduro on the basis that the claim was statute barred and awarded costs to the respondent.

Ms. Grant, being dissatisfied with the decision of the learned master, appealed. The issue on appeal was whether the learned master erred in finding that section 11A(1) of the MVIO has the effect of setting a three-year limitation period in relation to all types of actions for injury or damage caused by motor vehicles required to be insured under the MVIO, and in striking out her claim on the basis that it was filed outside that three-year limitation period.

Held: allowing the appeal; setting aside the order of the learned master in its entirety and reinstating the claim; ordering that the claim proceed to case management before a master on a date to be fixed by the Registrar of the High Court; and awarding costs to the appellant on the appeal and on the summary judgment application in the court below to be assessed if not agreed within 21 days, that:

1. The scheme created by the MVIO is built primarily on the conjoint effect of sections 3, 4(2) and 10. On the foundation of these provisions, the MVIO creates a statutory relationship of proximity between an injured third-party and an insurer, entitling the third-party to compensation from the insurer in the circumstances provided under the Act. The clear object and purpose of the MVIO is to regulate that third-party/insurer relationship, along with the incidents of that relationship mentioned in the Act. In light of this, it is evident that the MVIO does not intend to regulate actions arising outside the third-party/insurer relationship created by the Act, and which cannot be commenced, or for which no provision was made under the Act. Actions which are commenced or maintained otherwise than under the provisions of the MVIO, and which do not pertain to the third-party/insurer relationship, therefore fall outside the purview of its provisions. As the MVIO does not purport to regulate all possible actions, section 11A(1) ought not to be taken as imposing a limitation period in respect of all possible actions arising from injuries or damage caused by motor vehicles required to be insured. Therefore, the appellant's claim, being a claim for negligence, and not for any relief under the MVIO, is not subject to the three-year limitation period established under section 11A. Instead, the applicable limitation period is six years under section 4(1)(a) of the Limitation Ordinance.

Section 42(1) of the **Interpretation Act**, Cap. 136 of the Revised Laws of the Virgin Islands, 1991 applied; **Motor Vehicle Insurance (Third-Party Risks) Ordinance** Cap. 242 of the Revised Laws of the Virgin Islands, 1991 applied; **Motor Vehicle (Third-party Risks) (Amendment) Act,** Act. No. 7 of 2000 applied; Section 4(1)(a) of the **Limitation Ordinance**, Cap. 43 of the Revised Laws of the Virgin Islands,1991 applied; **Carl Baynes v Ed Meyers** ANUHCVAP2015/0026 (delivered 30th May 2016, unreported) considered; **Eastern Caribbean Insurance Limited v Edmund Bicar** SLUHCAP2008/0014, (delivered 3rd May 2010, unreported) considered;

2. If section 11A(1) was interpreted in its literal and broad sense, the limitation periods for both claims in negligence and for satisfaction of the judgment by an insurer under section 10 would begin to run, and expire, at the same time, with the result that, unless a party who brings a negligence claim also obtains a judgment and sues the insurer within those three years, the right to claim against the insurer would be lost before the claim against the insurer even arose. Furthermore, a broad interpretation of section 11A(1) creates two different limitation periods for the tort of negligence involving motor vehicles, one which is dependent on the existence of a contract of insurance thus falling under the MVIO and the other, where no contract of insurance exists, thus falling under the Limitation Ordinance or some other enactment. Parliament could not have intended these undesirable results having regard to the object and purpose of the Act construed in its entirety.

   Motor Vehicle Insurance (Third-Party Risks) Ordinance, Cap. 242 of the Revised Laws of the Virgin Islands, 1991 applied; Section 4(1)(a) of the **Limitation Ordinance**, Cap. 43 of the Revised Laws of the Virgin Islands, 1991 applied.

3. A court can consult marginal notes and other aids to interpretation where the words of an enactment reasonably give rise to ambiguity. The marginal note attached to section 11A reads: "Limitation period for proceedings under this Act". The marginal note clearly supports the purposive interpretation of section 11A(1), in as much as it appears to limit the applicability of the limitation period under section 11A(1) to "proceedings under the Act". This favours the conclusion that the phrase "no action" was not intended to be interpreted in its broader sense to include proceedings instituted otherwise than under the provisions of the MVIO.

   Section 12(2) of the **Interpretation Act**, Cap. 136 of the Revised Laws of the Virgin Islands, 1991 applied; **Universal Caribbean Establishment v James Harrison** (1997) 56 WIR 241 considered; **R v Montila** [2005] 1 All ER 113 considered.

4. The genuine ambiguity arising from the words in section 11A(1) allows for the use of interpretive tools to determine parliament's intention in enacting the section. The explanatory note to the Motor Vehicle (Third-party Risks)

(Amendment) Act which created section 11A, states that the Amendment Act "introduces new provisions relating to the limitation period for the institution of proceedings under the Act". This is clear evidence that section 11A was intended to set a limitation period for proceedings commenced under the MVIO and not any conceivable action which concerns injury or damage arising from a motor vehicle accident required to be insured under the MVIO.

Sections 42(2) and (3) of the **Interpretation Act**, Cap. 136 of the Revised Laws of the Virgin Islands, 1991 applied.

JUDGMENT

[1] **PEREIRA CJ:** This appeal arises from the decision of a master dated 5th December 2018 by which the appellant's claim for negligence was struck out and summary judgment entered in favour of the respondent, on the basis that the claim was filed outside of the three-year limitation period provided for in section 11A(1) of the **Motor Vehicle Insurance (Third Party Risks) Ordinance**[1] (hereinafter referred to as "the MVIO" or "the Act").

Background

[2] The relevant background facts are brief. On 1st February 2014, the appellant, Asiyah Grant ("Ms. Grant"), was struck down by a motor vehicle driven by the respondent, Javier Maduro ("Mr. Maduro"). Ms. Grant sustained very serious injuries for which she required substantial medical treatment both locally and overseas. She also required prolonged post-operative therapy.

[3] On 15th June 2018, over four years later, Ms. Grant instituted proceedings in the High Court against the respondent claiming damages for negligence flowing from the injuries she suffered. Ms. Grant's pleaded case was that the incident was "wholly caused by the negligence of the Defendant".

[4] On 28th August 2018, Mr. Maduro filed an application to strike out the appellant's claim pursuant to rule 26.3(1)(b) of the **Civil Procedure Rules 2000**. The strike-

[1] Cap. 242, Revised Laws of the Virgin Islands, 1991.

out application was made on the basis that the claim was time-barred by section 11A(1) of MVIO and therefore an abuse of process. Mr. Maduro argued that section 11A(1) establishes a three-year limitation period within which claims for injuries related to road traffic accidents must be instituted. Mr. Maduro argued therefore that the section operated to implicitly modify section 4 of the **Limitation Ordinance**[2] which provides that actions in tort are generally subject to a six-year limitation period.

[5] Ms. Grant opposed the application arguing that section 11A(1) of the MVIO does not apply to personal injury claims in tort, but instead applies to claims where causes of action arise under the MVIO. She argued that section 11A(1) was never intended to effect a substantive change to the limitation period for tort claims, and applies to an altogether different subject matter – claims under the MVIO.

[6] The strike-out application was heard on 3rd October 2018. After a detailed analysis of the relevant provisions and case law, the learned master found, at paragraph 22 of his judgment, that:

> "…section 11A clearly set[s] out to establish a limitation period for causes of action for which a policy of insurance is required under the Act. Injury arising from a motor vehicle is one such cause of action and the limitation of 3 years ought to apply as the express intention of parliament..."

[7] The master accordingly made the following orders:

> "(a) The claim, having been filed on 15th June, 2018 is statute barred in accordance with the provisions of section 11A of the Motor Vehicles Insurance (Third-Party Risks) (Amendment) Act 2000;
>
> (b) The claim is therefore struck out as an abuse of process;
>
> (c) Summary judgment is entered in favour of the defendant as the claimant has no prospect of successfully prosecuting this claim given the fact that it is statute barred;
>
> (d) Costs is granted to the defendant in the sum of $2000.00"

[2] Cap. 43, Revised Laws of the Virgin Islands, 1991.

The appeal

[8] Ms. Grant appealed the master's decision on 5 grounds. None of Ms. Grant's grounds of appeal addressed the fact that the master's order, at paragraph (c), purported to enter summary judgment on the claim which paragraph (b) of the said order had already struck out. In other words, nothing was made of the fact that, following the master's strike-out order, there was no extant claim upon which summary judgment could possibly have been granted. That said, the grounds of appeal and arguments understandably revolved around the question of whether the master erred in finding that section 11A(1) of the MVIO has the effect of setting a three-year limitation period in relation to all types of actions for injury or damage caused by motor vehicles required to be insured under the MVIO, and in finding that Ms. Grant's claim was statute barred under the section.

The appellant's submissions

[9] The heart of Ms Grant's position is that section 11A(1), when interpreted in light of its object and purpose, is not intended to apply to all conceivable actions arising from damage or injury caused by a motor vehicle required to be insured under the MVIO. She says that the MVIO imposes a statutory duty on an insurer to indemnify insured persons in respect of the liabilities owed to a third-party who suffered injury or damage from an accident, and to provide for the satisfaction by an insurer of judgments obtained by a claimant under the MVIO. In her view, therefore, the object and purpose of the MVIO, is to regulate the statutory right under the MVIO for an injured party involved in a motor vehicular accident to recover damages directly from an insured driver's insurer. She submits that the MVIO intends to cater to statutory actions against an insurer, as opposed to any other action including actions in negligence against a motor vehicle driver. Accordingly, Ms. Grant argues that section 11A(1) does not apply to her claim, that the six-year limitation period for tort claims set out in section 4(1)(a) of the **Limitation Ordinance** (which has not expired) is what applies, and that the master erred in striking out the claim.

[10] She further submits that the court is entitled to consider the marginal note to section 11A(1), as well as the explanatory note accompanying the **Motor Vehicle (Third-party Risks) (Amendment) Act**[3] (the "Amendment Act") which created section 11A. She contends that based on the marginal and explanatory notes, it is clear that the limitation period created by section 11A(1) applies to proceedings under the MVIO only. Alternatively, counsel for Ms. Grant argues that even if section 11A(1) was intended to apply to all types of actions, the master ought to have given her the benefit of the longer six-year limitation period which would have ordinarily applied to her claim under the **Limitation Ordinance**.

The respondent's submissions

[11] The respondent Mr. Maduro, through his counsel, argues that the words of section 11A are plain and must be followed. He argues that the Legislature's clear intention was to reduce the limitation period applicable to all actions for damage and injury caused by a motor vehicle required to be insured under the MVIO. He says therefore that by virtue of the words, "notwithstanding anything contained in any enactment or any rule of law", parliament clearly intended section 11A(1) to abridge the six-year limitation period applicable to tort claims under section 4 of the **Limitation Ordinance**, whenever a claim in tort arises in respect of injury or damage arising from a motor vehicle insured under the Act.

[12] The respondent also submits that section 11A(1) of the MVIO brings the limitation period in the Territory of the Virgin Islands for personal injury claims in line with the modern limitation periods prevailing elsewhere within the Eastern Caribbean, saying that a three-year limitation period exists for personal injury claims in Antigua and Barbuda, Dominica, Saint Lucia and Saint Vincent and the Grenadines.

[13] The respondent further argues that the ordinary and natural meaning of the words in an enactment ought not to yield to marginal and explanatory notes. He says that

[3] Act No. 7 of 2000.

the words used, being plain, the master was precluded from ascribing an interpretation outside the plain and ordinary meaning of section 11A(1), and was therefore correct in refusing to ascribe any weight to the marginal and explanatory notes.

[14] A convenient starting point in resolving the question arising on this appeal is the provisions of the **Limitation Ordinance** and the MVIO.

The Limitation Ordinance

[15] The **Limitation Ordinance** sets out the periods of limitation applicable to the different classes of actions, the circumstances in which those periods may be extended and other general provisions related to the application of limitation periods within the Virgin Islands.

[16] Of relevance to this appeal is section 4 which, in part, reads:

> "(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-
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> (a) actions founded on simple contract or on tort;
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> …
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> (d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture."

The Motor Vehicles Insurance (Third-Party Risks) Ordinance (MVIO)

[17] The MVIO was passed in 1961 and amended in 2000 by the Amendment Act. Section 3 of the MVIO prohibits the use of a motor vehicle on a road without a policy of insurance in respect of third-party risks. Section 3 reads:

> "(1) Subject to the provisions of this Ordinance, it shall not be lawful for any person to use, or to cause or permit any other person to use a motor vehicle on a road, unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third-party risks as complies with the requirements of this Ordinance.
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> …

(3) This section shall not apply to the using of a motor vehicle owned by the Government of the Territory or by Her Majesty's Government by a duly authorised person on official duty."

[18] The MVIO does not expressly offer a definition for "a policy of insurance in respect of third-party risks". Section 4 however goes on to state what ought and ought not to be contained in such an insurance policy. Importantly, subsection (2) requires an insurer to indemnify persons covered by an insurance policy, in respect of any liability which the policy purports to cover. Section 4 provides as follows:

> "(1) In order to comply with the requirements of this Ordinance, the policy of insurance (hereinafter referred to as the "policy") must be a policy which –
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> (a) is issued by a person who is an insurer; and
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> (b) insures such person, persons or classes of persons, as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to any property caused by, or arising out of, the use of the motor vehicle on a road.
>
> ...
>
> (2) Notwithstanding any rule of law or anything in law to the contrary, **an insurer shall be liable to indemnify the persons or classes of persons specified in the policy, in respect of any liability which the policy purports to cover, in the case of those persons or classes of persons**." (emphasis added)

[19] Section 5 speaks to the types of conditions which will, by law, have no effect if contained in an insurance contract entered into for the purpose of complying with the MVIO. Section 6 requires that an application for a licence or renewal of a licence under the **Road Traffic Act**[4] be supported by evidence of an existing insurance policy covering the applicant in accordance with the MVIO, or evidence that: (i) on the date on which the licence takes effect, there will be a

[4] Cap. 218, Revised Laws of the Virgin Islands, 1991.

policy in force as required by the Act in relation to the use of the motor vehicle by the applicant or by other persons with his order or permission; or (ii) the motor vehicle the applicant proposes to drive is not required to be insured in accordance with the MVIO.

[20] Section 7 obliges a driver to report a motor vehicle accident within 24 hours and upon reporting an accident, to provide evidence to the satisfaction of the Commissioner of Police, that the vehicle involved was duly insured or not required to be insured under the Act. Section 8 preserves the rights of third parties to claim against personal representatives of an insured person in the event of the death of the insured.

[21] Section 9 obliges a person against whom a claim is made in respect of any liability under the MVIO, on demand by or on behalf of the person making the claim, to state whether they were insured in respect of that liability by any policy entered into for the purpose of compliance with the MVIO or would have been so insured if the policy had not been avoided or cancelled by the insurer.

[22] Section 10(1) of the MVIO imposes a duty on insurers to satisfy judgments obtained against the insured in respect of third-party risks. The section reads:

> "If after a policy has been effected in favour of any person, judgment in respect of any such liability as is required by this Ordinance to be covered by a policy (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to the interest on judgments."

[23] Section 11 requires the Registrar of the High Court or the Clerk of the Magistrate's Court to, within ten days of the commencement of any proceedings by a third-party, give notice to the insurer of such proceedings. For these

purposes, every insurer shall provide his address and any change to such address to the Registrar or the Magistrate.

[24] Section 11A, which is the focus of this appeal, was introduced by the Amendment Act in 2000. The section establishes a period of limitation for the institution of actions "in respect of which a motor vehicle is required to be insured under [the] Act" and in respect of proceedings for an offence committed under the Act. The words of section 11A are as follows:

> "(1) Notwithstanding anything contained in any enactment or any rule of law or equity, **no action shall be brought in any court by or on behalf of any person after the end of the period of three years from the date on which a cause of action accrued for any injury or damage against or in respect of** which a motor vehicle is required to be insured under this Act.
>
> (2) No proceedings shall be brought against a person for an offence under this Act after a period of three years from
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> (a) the date of the commission of the alleged offence, or
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> (b) the date on which it came to the knowledge of the prosecution that the alleged offence had been committed, whichever is later." (emphasis added)

[25] Section 11B creates a number of general offences proscribing the dishonest or fraudulent issuance, use or production of a certificate of insurance. Finally, section 12 empowers the Minister to make regulations in support of the MVIO.

Discussion and Analysis

[26] This brings me to the issue as stated at paragraph 8 above. The specific question of construction which arises is whether the general words "no action" in section 11A(1) ought to be interpreted literally and broadly (as the master did), to include any conceivable action pertaining to injury or damage arising from a motor vehicle accident, or restrictively (as the appellant urges), to cover only actions commenced under the provisions of the MVIO.

[27] The Court, in its quest to interpret statutes, has concerned itself with discerning and giving effect to the intention of parliament when it passed the enactment. Traditionally, heavy reliance has been placed on the strict and literal meaning of words as evidencing that intention. Cases such as **The Sussex Peerage**[5] and **Abel v Lee**[6] well-encapsulate that traditional approach.

[28] For several decades now, there has been a discernible shift from a slavish insistence on the literal meaning of words in an enactment, and it is now well-settled that the immediate, legislative context of statutory words, along with the statute's object and purpose, are required to inform the assessment of parliament's intention. There is now a strong stream of jurisprudence supporting this purposive approach to interpretation. The House of Lords in **Pepper v Hart**[7] remarked:

> "...The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."[8]

[29] This Court, very recently, in **Rajiv Gunness v Saint George's University Limited (Owners and Operators St. George's University) et al**[9] recognised the high-importance of the purposive interpretation of legislation, stating:

> "It is a well-established principle that in interpreting legislative provisions the court would adopt a purposive interpretation so as to give effect to what is taken to have been intended by Parliament. The court will presume that Parliament does not intend to legislate so as to produce a result which is inconsistent with the statute's purpose or make no sense or is anomalous or illogical."

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[5] (1844) 8 ER 1034.
[6] (1871) LR 6 CP 365.
[7] [1993] A.C. 593.
[8] *Ibid* at 617E – F.
[9] GDAHCAP2016/0040 (delivered 3rd May 2018, unreported).

[30] Importantly, there is statutory weight to this purposive approach to interpretation in the Virgin Islands. Section 42(1) of the **Interpretation Act**[10] states as follows:

> "In the interpretation of a provision of an enactment, an interpretation that would promote the purpose or object underlying the enactment (whether that purpose of object is expressly stated in the enactment or not) shall be preferred to an interpretation that would not promote that purpose or object."

[31] With that said, it is apparent that the literal meaning of the phrase "no action" contained in section 11A(1) is merely the starting point of the analysis on the meaning of the words in section 11A(1). The operative question therefore becomes, what is the context, object and purpose in respect of which the words of section 11A(1) must be given effect?

Object and purpose of the MVIO

[32] In my view, the object and purpose of the MVIO is clear. The scheme created by the MVIO is built primarily on the conjoint effect of the following provisions:

(a) section 3, which creates a mandatory insurance requirement for all drivers, except users of motor vehicles owned by the Government of the Territory or by Her Majesty's Government, who are duly authorised and on official duty;

(b) section 4(2), which imposes an obligation on insurers to indemnify an injured third-party for all liability covered by the MVIO, and a corresponding right of action by an insured person against an insurer for damages flowing from incidents covered by the policy; and

(c) section 10, which creates an obligation on insurers to satisfy judgments obtained as result of an insured's conduct which is

[10] Cap. 136, Revised Laws of the Virgin Islands, 1991.

covered by the policy, and a corresponding right of action to an injured third-party for satisfaction of a judgment granted in its favour.

[33] On the foundation of these provisions, the MVIO creates a statutory relationship of proximity between an injured third-party and an insurer, entitling the third-party to compensation from the insurer in the circumstances provided under the MVIO. The clear object and purpose of the MVIO is to regulate that third-party/insurer relationship, along with the incidents of that relationship which are mentioned in the Act.

[34] I am fortified in my conclusion on the nature of the MVIO, by remarks made by this Court in relation to legislation from other jurisdictions, which are in *pari materia* to the MVIO. In relation to the **Motor Vehicle (Third-party Risks Act)** of Antigua and Barbuda[11] in **Carl Baynes v Ed Meyers**,[12] this Court made the following remarks at paragraph 18:

> "…the object of the Act was to impose an obligation for the benefit or protection of a particular class of individuals, namely, third-party users of the road who it could reasonably be foreseen were likely to suffer damage, injury or loss by the use of a motor vehicle on a public road and to ensure that in relation to such damage, injury or loss, such party could be assured of a fund to which he/she could look for compensation. It is even more so where the person using the vehicle and causing the damage is a man of straw. Parliament clearly intended some protection to third parties. Indeed, the entire purpose of the Act is to provide some protection to third parties who would also be lawful users of the road, to protect such parties against the risk of suffering damage while so doing by a person of straw and being unable to recover any compensation in such event."

[35] Further, in the case of **Eastern Caribbean Insurance Limited v Edmund Bicar**,[13] this Court, in the construing the **Motor Vehicle (Third Party Risks) Act** of Saint Lucia,[14] stated:

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[11] Cap. 288, Revised Laws of Antigua and Barbuda 1992.
[12] ANUHCVAP2015/0026 (delivered 30th May 2016, unreported).
[13] SLUHCAP2008/0014, (delivered 3rd May 2010, unreported).
[14] Cap 8.02, Revised Laws of Saint Lucia 2015.

> "It is worthwhile to have regard to the policy behind the Act. It expressly states that it is '[a]n Act to make provision for the protection of third parties against risks arising out of the use of motor vehicles.' Parliament also took cognisance of the fact that it is commonplace for persons other than the policyholder to drive vehicles and sought by legislated provisions to create a statutory exception to the general contractual principles with regard to privity so as to afford an avenue to a third-party to recover compensation from an insurer even though the third-party or the driver per se are not strictly speaking privy to the contract of insurance between the policyholder and his insurer."

[36] In light of its object and purpose, it is evident that the MVIO does not intend to regulate actions arising outside the third-party/insurer relationship created by the MVIO, and which cannot be commenced, or for which no provision was made under the Act. Actions which are commenced or maintained otherwise than under the provisions of the MVIO, and which do not pertain to the third-party/insurer relationship, therefore fall outside the purview of its provisions.

[37] It follows from the above that section 11A(1) ought not to be taken as imposing a limitation period in respect of all possible actions arising from injuries or damage caused by motor vehicles required to be insured, as the MVIO does not purport to regulate all possible actions. Rather, section 11A(1), interpreted in light of the object and purpose of the MVIO, intends to set a limitation period in respect of actions which are commenced and for which provision is made under the provisions of the MVIO. It follows further that the words "notwithstanding anything contained in any enactment or any rule of law or equity", in section 11A cannot be construed as derogating from the limitation period set out in the **Limitation Ordinance** as actions in tort were never intended to be regulated by the MVIO. On the contrary, it appears that parliament sought to abridge the general six-year statutory limitation period provided for in section 4(1)(d) of the Limitation Ordinance, which specifically speaks to the recovery of "any sum recoverable by virtue of any enactment".

[38] In light of the foregoing, the appellant's claim, being a claim for negligence, and not for any relief under the MVIO, is not subject to the three-year limitation period established under section 11A. Instead, as a claim in negligence, the applicable limitation period is six years under section 4(1)(a) of the **Limitation Ordinance**.

Limitation Periods in other Commonwealth Caribbean Territories

[39] Limitation periods are created by statute and determined in accordance with the will of each jurisdiction's sovereign parliament. The limitation periods in other jurisdictions are therefore, in all respects, immaterial and irrelevant to the specific issue on appeal as they offer no assistance in determining whether, in the Virgin Islands, parliament had intended to impose a three-year limitation under section 11A in respect of any or all actions for injury or damage from a motor vehicle accident. There is, to my mind, therefore no basis upon which one could draw any inferences from the limitation periods in other jurisdictions, as the respondent has invited this Court to do.

Resulting absurdity from strict literal interpretation

[40] Apart from my observations and conclusions on the object and purpose of the MVIO, there is also to my mind an absurdity which arises from the interpretation of the section 11A in broad terms. Were the words "no action" in section 11A interpreted in their literal and broad sense, the limitation period for all claims pertaining to injury and damage caused by a motor vehicle would run at the same time. In effect, the limitation periods for both claims in negligence and the claim for recovery of the judgment upon the claim under section 10 would begin to run and expire at the same time. Accordingly, both a third-party's claims in negligence against a driver, and for satisfaction of a judgment by an insurer under section 10, would per force be required to be commenced within the three-year period under the MVIO.

[41] This would lead, in my view, to the absurd result that, unless a party who may have brought his negligence claim within the three year period, also obtains a judgment within that three years and sues the insurer within the said three years, the third-party runs the real risk that his claim against the insurer would be lost before the claim against the insurer even arose. Parliament could not have intended this undesirable result having regard to the object and purpose of the MVIO construed as a whole.

[42] Furthermore, in this case, the appellant's claim as framed in negligence did not engage the defendant's insurer. It was a claim simply for the tort of negligence which happens to be one involving a motor vehicle whether the defendant was insured or not. Taken to its logical conclusion, the respondent's interpretation of section 11A(1) creates two possible limitation periods applicable to the appellant's claim, both of which are dependent on the existence of a contract of insurance. There would first be the three-year limitation period under section 11A(1) which would apply if the respondent's vehicle was insured and its liabilities were regulated by the Act. Alternatively, there would be a six-year limitation period applicable to the claim, as an ordinary tort claim under section 4(1)(a) of the **Limitation Ordinance**, if there were no extant contract of insurance and no third-party/insurer relationship, thus excluding the possibility of a claim for under the Act. It would mean that a claim in negligence involving a motor vehicle which was <u>not required to be insured,</u> as clearly recognised under the MVIO (see sections 5 and 7), may be governed by either the six year limitation period under the **Limitation Ordinance** or, depending on the circumstances, for example in respect of a government vehicle which is not required to be insured under the MVIO (see section 3), being governed by some other limitation period which may be even shorter than three (3) years. An example which comes to mind is if such a claim fell under the **Public Authorities Protection Act**.[15]

[15] Cap. 62, Revised Laws of the Virgin Islands, 1991.

[43] Could it be conceivably argued that parliament intended the tort of negligence involving motor vehicles to be governed by two different limitation periods – one dependant on whether the motor vehicle was insured and thus falling under the MVIO, and the other under the **Limitation Ordinance** or some other enactment to operate when no insurance was ever in place? I think not. This also propels me to the view that this was not the intention of parliament and that the word "action" used in section 11A of the MVIO is limited to actions under the MVIO and is not of any broader application. This is completely in keeping with the purpose and object of the MVIO.

The effect of the marginal note to section 11A

[44] Much has been made of the role of marginal notes as a tool for interpreting section 11A. Though the status of marginal notes as an interpretive tool has been the source of much debate historically, express provision is made in section 12(2) of the **Interpretation Act** for the use of marginal notes as aids to arriving at the meaning of an enactment. Section 12(2) states:

> "Marginal notes, side notes or headings in an enactment and references to other enactments in the margin or at the end of an enactment shall be construed as part of the enactment and may be considered in ascertaining the meaning of an enactment."

[45] Importantly, as the respondent submitted, section 12(2) does not suggest that a court is obliged to use marginal notes, or that these notes are always representative of the meaning of a provision. Rather, section 12(2) opens the door for marginal notes to be utilised as aids to interpretation. Indeed, a court is well within its right to consult marginal notes (and other aids to interpretation) where the words of an enactment reasonably give rise to ambiguity. I adopt the words of Byron CJ, who in **Universal Caribbean Establishment v James Harrison**[16] stated:

> "The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole

[16] (1997) 56 WIR 241.

> and in its context. **It is only where the words of the statute are not clear and unambiguous that it is necessary to enlist aids for interpretation**…" (emphasis added)

[46] There can undoubtedly be much difficulty when one moves to consult marginal notes as interpretive aids. The respondent emphasised this and relied on a number of authorities to discourage drawing any inferences from the marginal note attached to section 11A. Addressing these difficulties however, the House of Lords in **R v Montila**[17] spoke to the balancing act that must take place when one moves to deploy the use of a marginal note in attempting to discern the legislative intention. The House of Lords said:

> "Account must, of course, be taken of the fact that these components were included in the Bill not for debate but for ease of reference. This indicates that less weight can be attached to them than to the parts of the Act that are open for consideration and debate in Parliament. But it is another matter to be required by a rule of law to disregard them altogether. One cannot ignore the fact that the headings and side notes are included on the face of the Bill throughout its passage through the Legislature. They are there for guidance. They provide the context for an examination of those parts of the Bill that are open for debate. Subject, of course, to the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book."

[47] This is not a case where, as the master suggested, the court is asked to "defer to the headnote" in the face of clear and unambiguous words. In this case, there is a clear, genuine conflict between the literal and purposive meanings of section 11A. In light of that, the use of a marginal note as an aid to arriving at the appropriate construction of the section is, in my view, appropriate.

[48] The marginal note attached to section 11A reads: "Limitation period for proceedings under this Act". Given what is clearly the object and purpose of the MVIO as outlined in the preceding paragraphs, the marginal note clearly supports the purposive interpretation of section 11A, in as much as it appears to limit the

[17] [2005] 1 All ER 113.

applicability of the limitation period under section 11A to "proceedings under the Act". This favours the conclusion that the phrase "no action" was not intended to be interpreted in its broader sense to include proceedings instituted otherwise than under the provisions of the MVIO.

[49] Interestingly also, section 11A uses the words "no action" as well as the words "a cause of action." It cannot be understood that Parliament intended both sets of words to mean the same thing within the same section. The "cause of action" section 11A speaks to, is a reference to the cause of action arising from the MVIO which relates to damage or injury caused by a motor vehicle, whereas, the reference to "no action" used earlier in the section relates to a proceeding instituted under the MVIO which are prescribed by three years. The section, though to my mind clumsily drafted, is clarified by the marginal note as to its intent and purport, and when placed within the entire scheme and context of the MVIO.

The Explanatory Note to the Amendment Act

[50] Express provision is made in the **Interpretation Act** for the consideration of explanatory notes as interpretative tools. Section 42(2) and (3) state, *inter alia*, as follows:

> "(2) Subject to subsection (4), in the interpretation of a provision of an enactment, if any material not forming part of the enactment is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material:
>
> (a) …
>
> (c) to ascertain the meaning of the provision when
>
> (i) the provision is ambiguous or obscure, or
>
> (ii) …
>
> (3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of an enactment shall include
>
> (i) …
>
> (ii) Any explanatory statement relating to the Bill containing the provision."

[51] The Court was not provided with the full text of the explanatory note to the Amendment Act. The excerpt relied upon by the appellant reads:

> "The Bill also introduces new provisions relating to limitation period for the institution of proceedings under the Act and general offences and penalties… It is hoped that the enactment of this Bill will bring about much needed improvement in claims settlement within the insurance industry."

[52] The authorities reveal that marginal and explanatory notes are to be similarly treated when used as interpretive tools. I accordingly note the concerns expressed in the excerpt of **Bennion on Statutory Interpretation** which is cited by the respondent as saying:

> "While the text of an enactment is produced by a skilled drafter intent on devising the actual words which constitute the law, and is what the legislator has approved as being the law, all other explanatory texts are likely to have been produced by persons other than the drafter who may not be skilled in the principles of statute law and may not have the full knowledge of the enactment and its purposes which is possessed by the drafter. Furthermore any text which aims to condense, paraphrase or otherwise restate the effect of the enactment is bound to convey a meaning which cannot be exactly the same as the legal meaning of the enactment."[18]

[53] As stated in the foregoing paragraphs, the genuine ambiguity arising from the words "no action" in section 11A opens the door for enlisting interpretative tools (like the explanatory note) to assist with determining the true intent of parliament. In my view, the brief excerpt from the explanatory note speaks for itself and is clear evidence that section 11A was intended to apply to proceedings under the MVIO, and not any conceivable action which concerns injury or damage arising from a motor vehicle accident required to be insured under the MVIO.

[54] I would go further to say that broadly interpreting section 11A in conflict with the clear object and purpose of the MVIO, and where the marginal and explanatory

[18] Bennion on Statutory Interpretation (5th edn, LexisNexis UK 2008) p. 643.

notes do not accord with such an approach, creates an absurdity in the legislative scheme and runs afoul of parliament's clear intention. There is to me, no doubt that, the three-year limitation period provided by section 11A was intended to apply to actions under the MVIO and not all possible actions involving injury and damage arising from motor vehicles required to be insured.

Conclusion

[55] For all the above reasons, I would allow the appeal, set aside the learned master's order dated 5th December 2018 and award costs in the appeal and in the summary judgment application to the appellant to be assessed if not agreed within 21 days. I would therefore make the following orders:

(1) The appeal against the order made by the learned master on 5th December 2018 is allowed.

(2) The order of the master dated 5th December 2018 is hereby set aside in its entirety, and the claim is hereby reinstated

(3) The claim is to proceed to case management before a master on a date fixed by the Registrar of the High Court.

(4) The respondent shall bear the appellant's costs on this appeal and on the summary judgment application in the court below, with such costs to be assessed if not agreed within 21 days.

I concur.
Davidson Kelvin Baptise
Justice of Appeal

[56] **COURTENAY JA [AG.]**: I have carefully read the judgment of the Honourable Chief Justice, and I am in full agreement with her reasoning and ultimate conclusion. The importance of this judgment to the Territory of the Virgin Islands compels me to add a few words explaining my concurrence.

[57] Prior to the MVIO, a victim of a road traffic accident would have been entitled to bring an action in tort for damages for compensation arising from the accident. The limitation period applicable to such a claim would be six years.[19] This appeal raises the question whether the introduction of section 11A by the Amendment Act reduced this limitation period to three years.

[58] It was never the intention of the Legislature, when it enacted the MVIO, to alter the right to sue for the tort of negligence howsoever arising. The main purpose behind the MVIO was to create new causes of action conferring benefits on third parties and to place correlative duties on insurers. The common law right to sue in negligence arising from a motor vehicle accident, was not displaced, and continued to exist alongside the new statutory causes of action created by the MVIO.

[59] Up until to 2000, section 4(1)(a) of the **Limitation Ordinance** set a limitation period of six years for both the common law negligence action as well as the new statutory causes of action for which sums were recoverable under the MVIO. The 2000 amendments to section 4 of the MVIO significantly increased the potential liability of insurance companies in respect of causes of action under the MVIO. It seems fairly obvious to me that as a consequence the Legislature introduced section 11A(1) to reduce the limitation period during which claims could be brought for which insurers would be exposed to liability. The claim from which this appeal sprung is not such a claim.

[60] I am satisfied, that the Legislature did not intend, by introducing section 11A(1) of the MVIO, to also reduce the period applicable to negligence claims involving motor vehicles for which insurers would not be liable. Section 11A(1) of the MVIO does not operate as an implied amendment to section 4(1)(a) of the **Limitation Ordinance.**

[19] Section 4 of the Limitation Ordinance.

[61] For the reasons quite compellingly articulated by the Honourable Chief Justice, section 11A(1) of the MVIO was never intended to, and should not be construed as impacting a common law claim in negligence in respect of a motor vehicle accident where the claimant does not rely on the MVIO.

By the Court

Chief Registrar