THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2022/0007

BETWEEN:

THE SOCIAL SECURITY BOARD

Appellant

and

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LIMITED

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis	Justice of Appeal
The Hon. Mr. Eddy D. Ventose	Justice of Appeal
The Hon. Mde. Esco L. Henry	Justice of Appeal

Appearances:

Mrs. Angelina Gracy Sookoo-Bobb for the Applicant
Mr. Damien Kelsick, KC with him, Ms. Hadya Dolphin for the Respondent

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2024: November 12;
2026: June 17.

Appeal to His Majesty in Council – Leave to appeal – Appeal as of right – Section 99 of the Saint Christopher and Nevis Constitution Order 1983 - Whether the applicant is entitled to appeal as of right – Final and interlocutory orders – Application test – Enforcement of civil debts – Whether a Court of Appeal decision allowing joinder and declaring priority to Social Security Board debt was a final decision – Whether "property" includes real property – Whether the appeal involved directly or indirectly a claim to or question respecting property of the prescribed value – Whether leave should be granted on the ground of great or general public importance – Statutory interpretation – Interaction between the Social Security Act, Cap. 22.06, Income Tax Act, Cap. 20.22 and the Tax Administration and Procedures Act, Cap. 20.52 – Priority of social security contributions over secured creditors – Need for certainty in commercial and banking transactions

The applicant bank sold real property belonging to a debtor pursuant to the Title by Registration Act ("the Act") and paid the proceeds into court, subsequently applying under section 81 of the Act to settle the scheme of division. Because the debt owed to the applicant exceeded the sale price, no other creditor stood to benefit from the proceeds of the sale of the property. The respondent, the Social Security Board ("SSB"), applied to be added to the proceedings, asserting that the debtor owed it statutory financial obligations (the "Debt") under the Social Security Act ("SSA"), the Protection of Employment Act, and the Housing and Social Development Levy Act. The SSB argued that pursuant to sections 72 and 75 of the Income Tax Act ("ITA") (incorporated by reference into the SSA), it possessed a statutory priority interest in the property that ranked ahead of the Applicant's secured mortgage.
The learned master dismissed the SSB's application, holding that "property" in section 75 of the ITA was restricted to movable property, and that under section 30 of the Tax Administration and Procedures Act ("TAPA"), the SSB's lien did not rank in priority to a secured creditor.

The applicant thereafter appealed the master's decision to the Court of Appeal. The Court of Appeal allowed the appeal of the master's decision, holding that "property" included real property by virtue of the Interpretation Act, that section 75 of the ITA operated as a stand-alone enforcement mechanism for the SSA, and that the TAPA did not apply to social security contributions.

The applicant applied to the Court of Appeal for conditional leave to appeal to His Majesty in Council, arguing that an appeal lay as of right under section 99(1)(a) of the Constitution because the decision was a final decision in civil proceedings involving a claim to, or question respecting, property of the prescribed value. Alternatively, it sought conditional leave under section 99(2)(a) on the basis that the appeal raised questions of great general or public importance concerning the interpretation of the Social Security Act, the Income Tax Act and the Tax Administration and Procedures Act, including the scope of the term "property" and the priority afforded to unpaid social security contributions.

The respondent opposed the application, contending that the decision was interlocutory and therefore not appealable as of right, and that the issues raised merely involved the application of settled principles of statutory interpretation.

Held: granting conditional leave to appeal to His Majesty in Council pursuant to section 99(2)(a) of the Constitution and ordering that costs of this application shall be costs in the appeal, that:

1. The applicant is not entitled to appeal as of right under section 99(1)(a) of the Constitution because the decision from which it seeks to appeal was interlocutory rather than final. Applying the well-established application test, an order is final only where the application on which it is made would determine the matter in litigation for either of the parties. The decision under challenge arose from an interlocutory application concerning joinder and the inclusion of the Social Security Board in proceedings relating to the settlement of a scheme of division of sale proceeds. A refusal of the application would not have disposed of the substantive proceedings and would not have brought the litigation to an end. The determination was therefore

procedural in nature and did not finally determine the rights of the parties in the substantive claim. Accordingly, the judgment of the Court of Appeal did not constitute a "final decision" within the meaning of section 99(1)(a) and cannot found an appeal to His Majesty in Council as of right.

Section 99(1)(a) of the **Saint Christopher and Nevis Constitution Order 1983** applied; **Rule 62.1(3)** of the **Civil Procedure Rules 2000** applied; **Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail and another** [2024] UKPC 10 applied; **Othniel Sylvester v Satrohan Singh** SVG Civil Appeal No. 10 of 1992 (delivered 18th September 1995, unreported) followed; **Salaman v Warner** (1891) 1 QB 734 applied.

2. Although the underlying dispute concerned proceeds derived from the sale of mortgaged land and competing claims to those proceeds, the true focus of the appeal was the interpretation and operation of statutory provisions governing the recovery and priority of social security contributions. The appeal concerned the statutory mechanisms available to the Social Security Board and the order in which competing debts were to be satisfied rather than a direct adjudication of proprietary rights. The issues raised were primarily procedural and statutory in nature and the monetary value involved did not alter the character of the proceedings. The proposed appeal does not involve directly or indirectly a claim to, or question respecting, property within the meaning of section 99(1)(a) of the Constitution and section 3(1)(a) of the Saint Christopher and Nevis Appeals to Privy Council Order 1967 so as to attract an appeal as of right.

   Section 99(1)(a) of the **Saint Christopher and Nevis Constitution Order 1983** applied; **Section 3(1)(a)** of the **Saint Christopher and Nevis Appeals to Privy Council Order 1967** considered; **Junkanoo Estate Ltd v UBS Bahamas Ltd** [2017] UKPC 8 considered; **Sian Participation Corp (In Liquidation) v Halimeda International Ltd** [2023] UKPC 16 considered.

3. The proposed appeal nevertheless raises questions of great general or public importance sufficient to warrant the grant of conditional leave pursuant to section 99(2)(a) of the Constitution. It raises important questions concerning the mutatis mutandis application of sections 70 to 75 of the Income Tax Act within the social security legislative framework, the proper interpretation of the term "property", and the extent to which the Tax Administration and Procedures Act affects the enforcement regime incorporated into the Social Security Act. The competing conclusions reached by the master and the Court of Appeal demonstrate that these issues are genuinely arguable and require clarification. Given the relative absence of judicial authority and the implications of the decision for the priority of mortgages, secured lending, debt recovery and the administration of social security contributions, the Court is satisfied that the appeal transcends the interests of the parties and raises questions which, by reason of their great general or public importance, ought to be submitted to His Majesty in Council.

Sections 40, 44 and **49** of the **Social Security Act, Cap. 22.06** considered; **Sections 72-75** of the **Income Tax Act, Cap. 20.22** considered; **Section 30** of the **Tax Administration and Procedures Act, Cap. 20.52** considered; **Renaissance Ventures Ltd et al v Comodo Holdings Ltd** BVIHCMAP2018/0005 and BVIHCMAP2018/0008 (delivered 8th October 2018, unreported) applied.

JUDGMENT

Introduction

[1] **ELLIS JA**: Before the Court is the application of the applicant for an order granting leave to appeal to His Majesty in Council against the judgment of the Court of Appeal herein delivered on the 25th day of July 2024 pursuant to the provisions of Section 99 of the **Saint Christopher and Nevis Constitution Order** 1983 and that the costs of this Application be costs in the Appeal.

[2] The motion is made pursuant to section 99(1)(a) of the Constitution (appeal as of right); and/or section 99(2)(a) (conditional leave).

Background

[3] The applicant (the first respondent in the appeal) sold a property belonging to Exclusive Retreats Limited (the second respondent in the appeal) for US$ 540,000 pursuant to the provisions of the **Title by Registration Act**[1] ("the Act"). The proceeds of the sale of the property were paid into court. On 26th January 2021, the applicant applied to the court pursuant to section 81 of the Act to settle the scheme of division of the sale price. Section 81 of the Act provides:

> "So soon as the price has been completely paid, the Registrar of the High Court shall draw up a scheme of division of the price, as set out in Form 18 in the Second Schedule and the mortgagee or encumbrancee who is prosecuting the sale shall, in like manner as was done for the settling of the articles of sale, call the mortgagees and encumbrancees and all parties interested before the Court, and the Court shall settle the scheme of division and direct the Registrar of the High Court to pay the amounts to the

[1] Cap. 10.19 of the Revised Laws of Saint Christopher and Nevis.

respective persons preferred, upon receipt given by them, or those acting for them, opposite to their names in the scheme of division."

[4] However, since the amount due to the applicant exceeded the sale price, no other creditor stood to benefit from the proceeds of the sale of the property.

[5] The respondent, Social Security Board ("the SSB") applied on 30th July 2021 for an order for it to be added to the proceedings arguing inter alia that Exclusive Retreats Limited has statutory financial obligations to it in the sum of EC$757,697.92 (the "Debt") for the period February 2005 to August 2011 under the **Social Security Act**[2] ("SSA"), the **Protection of Employment Act**[3], and the **Housing and Social Development Levy Act**[4] ; that pursuant to sections 72 and 75 of the **Income Tax Act** [5]("ITA"), the respondent is granted a statutory interest in the property that was sold by the applicant and that, notwithstanding that the respondent informed the applicant of its interest in the property before it was sold, the applicant filed an application to settle the scheme of division of the sale price without paying the respondent the Debt or including the respondent's statutory priority interest in the scheme of division of the sale price.

[6] The respondent also sought, in the alternative, an order that the sale of the property by the applicant was unlawful and null and void for failing to comply with sections 72 to 75 of the ITA. Under that notice of application, the following questions/issues arose to be determined:

(1) Whether the respondent has a statutory priority right to seize and sell the Property and consequently a priority right to the proceeds of sale;

(2) Whether the debt of EC$757,697.92 owing to the respondent should be included in the scheme of division of the sale price of the Property as a debt in priority to the debt owed to the applicant;

[2] Cap. 22.06 of the revised Laws of Saint Christopher and Nevis.
[3] Cap 18.27 of the revised Laws of Saint Christopher and Nevis.
[4] Cap. 20.21 of the revised Laws of Saint Christopher and Nevis.
[5] Cap. 20.22 of the revised Laws of Saint Christopher and Nevis.

(3) Whether the applicant's application to settle the scheme of division of the sale price of the Property is invalid and/or unlawful because it failed to comply with the procedure prescribed by section 81 of the Title by Registration Act which requires it to give notice of the application to settle the scheme of division to the applicant prior to or after filing same;

(4) Alternatively, that the sale of the Property by the applicant is unlawful and null and void as it failed to comply with the provisions of sections 70 to 75 (now 72 to 77) of the Income Tax Act.

[7] On 9th May 2022, the learned master delivered judgment in favour of the applicant herein and dismissed the application. The learned master held that: (1) there was no evidence before him that either of the two processes outlined in section 72 of the ITA were followed in relation to the Debt claimed by the respondent, (2) the word "property" as defined in section 75 of the ITA did not include real property, rather it referred to movable property, good and chattels of the debtor, (3) if it did, by virtue of section 30 of the **Tax Administration and Procedures Act**[6] ("TAPA"), the lien for the unpaid contributions due and owing, if any, did not rank in priority to any debt owed to the applicant which is a secured creditor, (4) there was no evidence of any judgment being entered in the High Court against the applicant pursuant to section 3 of the **Judgments Act**[7], which would have created a charge against the land owned by the first respondent and (5) in the absence of such a charge and considering section 30(3)(b) of the TAPA, the respondent's debt did not rank in priority over the applicant's interest.

[8] The respondent appealed the judgment of the learned master on a number of grounds which gave rise to the following issues for the Court's determination:

[6] Cap. 20.52 of the revised Laws of Saint Christopher and Nevis.
[7] Cap 3.14 of the revised Laws of Saint Christopher and Nevis.

(1) Whether the High Court or the Magistrate's Court was the court of competent jurisdiction for any enforcement proceedings in respect of the Debt;

(2) Whether the word "property" in section 75 of the ITA includes real property; and

(3) Whether the provisions of the TAPA applies to 2 sections 75 of the ITA (as relevant to the recovery of social security contributions by virtue of section 44 of the SSA).

[9] In its judgment, the Court of Appeal allowed the appeal and substituted the following orders for those made by the master:

(1) The application by the appellant (the respondent herein) to be added as a party to the proceedings is granted.

(2) A declaration is granted that the debt owing by the second respondent (Exclusive Retreats Limited) to the appellant (the respondent herein) in the sum of EC$757,697.92 shall be included in the scheme of division pursuant to section 81 of the TRA of the sale price as a debt in priority to the debt owed by the second respondent (Exclusive Retreats Limited) to the first respondent (the applicant herein).

[10] The Court of Appeal reasoned that where an employer fails to make its contribution to the Social Security Fund, the Social Security Board may pay the person the benefit of that contribution and then seek to recover summarily in a Magistrate's Court from the employer as a civil debt a sum equal to the amount of benefit so lost irrespective of the amount. The court in which the Board can seek to recover such sum from the employer is the Magistrate's court. This is made clear by section 49(1) of the SSA read in tandem with section 72 of the ITA as required by sections 44(1) and 44(2) of the SSA.

[11] The Court also held that section 75(1) of the ITA provides that where a person sells any property, goods or chattels, before any such sale, that person must pay or cause to be paid to the Director all arrears of contributions which are due at the time when the property, goods or chattels are seized. While section 75 originates from the ITA, it is to be read as a stand-alone provision for the purposes of the SSA. The other provisions of the ITA cannot be used to interpret section 75 unless expressly incorporated into the SSA by section 44 of the SSA. The question of how "property" is to be defined needs to be answered since it is not defined in the SSA.

[12] Section 2(1) of the **Interpretation Act**[8] ("IA") provides the necessary assistance. It states that "property" includes money, goods, things in action, land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incidental to property as herein defined. The definition of "property" for section 75 must be that as defined in section 2(1) of the IA and that definition includes real and personal property. Section 75 must be read purposively to allow for the sale in respect of all types of property that are defined in section 2(1) of the IA.

[13] The Court of Appeal further held that the TAPA applies to "taxes" under a tax law, not "contributions" under the SSA. Further, the Department of Inland Revenue does not administer "contributions" under the SSA. Section 40 of the SSA expressly states that the contributions to the Social Security Fund shall be under the control and management of the Social Security Board. The argument that the TAPA has impliedly repealed section 75 of the ITA is misconceived as it does not differentiate between section 75 as applied to the SSA and section 75 as a provision in the ITA. Even if section 30 of the TAPA has that effect, it would still not apply to section 75 when it is used as a part of the enforcement machinery for the recovery of contributions pursuant to section 44 of the SSA.

[8] Cap. 1.02 of the revised Laws of Saint Christopher and Nevis.

[14] Dissatisfied with the judgment of the Court of Appeal, the applicant now seeks leave to appeal to His Majesty in Council. The applicant advances its application on two limbs of the Saint Christopher and Nevis Constitution Order 1983. First, the applicant contends that the decision of the Court of Appeal is a final decision in civil proceedings and the matter in dispute involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards. The applicant therefore submits that the judgment is one from which an appeal to His Majesty in Council lies as of right within the meaning of Section 99 of the Constitution.

[15] Alternatively, the applicant also contends that the question involved in the decision appealed is one that, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for several reasons. First, the applicant asserts that in paragraph [16] of its judgment, the Court of Appeal held that while section 75 of the ITA originated in the ITA, for the purposes of the SSA it is to be read as a stand-alone provision and that the other provisions of the ITA cannot be used to interpret section 75 unless it is one of the provisions which was expressly incorporated into the SSA by section 44.

[16] The applicant submitted that this is a novel, and incorrect, rule of statutory construction which can have far-reaching consequences. By way of illustration, the applicant cites section 18(1) of the IA which provides that:

> (1) "Where any law repeals and re-enacts, with or without modification, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted."

[17] Counsel for the applicant argued that the novel rule enunciated by the Court of Appeal could render otiose section 18(1) of the IA and that the effect of this interpretation is to enlarge the scope of section 75 in favour of the respondent beyond its scope under the ITA.

[18] Second, the applicant noted that in paragraphs [17] and [18] of its judgment, the Court of Appeal held, respectively, that section 75 must be read purposively to allow for the sale in respect of all types of property that is defined in section 2(1) of the IA and that a purposive interpretation suggests that it was the intention of Parliament that property should be given a more general meaning rather than the narrow one proffered by the respondent. The Court further held that section 75 must be read as a whole in the context of the SSA not the ITA and that that the definition of land in the ITA cannot be imported into the SSA. According to the applicant, this is also a novel and incorrect rule of interpretation and encroaches upon the several established principles of statutory interpretation especially with respect to the interpretation of statutory provisions incorporated by reference into another Act.

[19] The applicant further takes issue with paragraphs [20] and [21] of this Court's judgment, in which it held that because the TAPA applied to "taxes" under a tax law and not "contributions" under the SSA, the Inland Revenue Department does not administer "contributions" under the SSA; that section 40 of the SSA expressly states that contributions to the Social Security Fund shall be under the control and management of the Board and that these matters were sufficient to answer definitively the question of whether the TAPA has any application to the SSA. The applicant submits that this is a novel, and incorrect, rule of interpretation with respect to the interpretation of statutory provisions incorporated by reference into another Act.

[20] Further, in so far as in paragraph [21] of its judgment, the Court of Appeal determined (1) that the submission that section 18(1) of the IA applied to section 30 of the TAPA so as to amend the reference in section 44 of the SSA to section 30 of the TAPA instead of section 75 of the ITA was misconceived because it does not differentiate between section 75 (as applied to the SSA) and section 75 (as a provision in the ITA); (2) that section 18(1) of the IA was inapplicable because its application would be unworkable because (a) it would require the court to engage in a complete rewrite of section 30 of the TAPA, a legislative function that is vested

in the Parliament of Saint Christopher and Nevis, not the court; and (b) the Board is a body corporate and cannot be equated with the Crown for the purpose of section 30 of the TAPA and; (3) that if Parliament intended the entire enforcement regime under the TAPA to apply, with any subsequent modifications by future legislation, it could have simply and clearly stated that. The method used by Parliament in section 44 does not lend itself to the analysis submitted by counsel for the respondent, then, in each respect, the Court of Appeal adopted a novel, and incorrect, rule of interpretation with respect to the interpretation of statutory provisions incorporated by reference into another Act.

[21] The application is robustly opposed by the respondent which contends that the issues raised in this appeal do not meet the criteria for leave to appeal to the Privy Council, whether as of right under section 99(1) of the Constitution or as a matter of great public importance under section 99(2). In respect of the former, the respondent asserts that the applicant's motion arises from an interlocutory ruling under CPR 62.2 and 62.13 and is not a final judgment eligible for an automatic appeal.

[22] Counsel for the respondent argued that the recent Privy Council case of **Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail and another**[9] does not assist the appellant. The Privy Council, in that case, clarified that interlocutory appeals, even at the stage of an application for leave to appeal from the Court of Appeal to the Privy Council, remain non-final. Counsel submitted that in the interest of consistency, the same test applied when appealing from the High Court should be used when appealing from the Court of Appeal to the Privy Council. Therefore, the assertion that this now qualifies for appeal as of right as a final order lacks merit and should be dismissed.

[23] Additionally, Counsel argued that the focus of the Court of Appeal's judgment would have been the interpretation of statutes: the ITA, the SSA, and the TAPA, addressing the statutory mechanisms and priority right for enforcing civil debts owed

[9] [2024] UKPC 10; [2024] 4 LRC 354.

to the Social Security Board. While monetary amounts are involved, the focus was procedural rather than an adjudication of property entitlement exceeding the statutory monetary threshold for direct appeal, making the "value" argument peripheral. In support of this submission the respondent relied on the Privy Council judgment in **Junkanoo Estate Ltd v UBS Bahamas Ltd (in voluntary liquidation)**[10] in which the Board held that leave to appeal was required when seeking to enforce mortgage property rights.

[24] In **Junkanoo**, the appellants sought leave to appeal to the Privy Council concerning a mortgagee's action initiated by UBS for possession of residential property in the Bahamas. UBS claimed that Junkanoo Estate defaulted on a $1.4 million loan, while the defendants argued the defaults were caused by UBS's own contractual breaches in managing invested funds. UBS obtained a summary judgment in the Bahamian Supreme Court. When the defendants tried to appeal this summary judgment, they failed to seek the necessary leave to appeal, which resulted in the Court of Appeal dismissing the appeal. The Board denied leave on the basis that it generally reserves leave for issues of broad legal importance or cases with significant implications. In **Junkanoo**, the procedural nature of the errors did not satisfy this threshold, as the issues raised were confined to the appellants' specific circumstances.

[25] The respondent also contends that the application also fails to meet the threshold set out under section 99(2) of the Constitution. Counsel relied on this Court's judgment in **Pacific Wire and Cable Co. Ltd v Texan Management Ltd**[11] in which the Court considered several key principles for granting leave to appeal. The respondent argued that while leave to appeal may be granted when the question is of "great general or public importance", this typically means there is a serious issue of law, an unresolved constitutional provision, or a legal question that, if decided, would have significant implications beyond the immediate parties. Counsel

[10] [2017] UKPC 8.
[11] BVIHCVAP2006/0019 (delivered 15th October 2007, unreported).

suggested that matters involving the interpretation of a broadly applicable procedural rule fall under this category.

[26] Counsel argued that there is no issue of great public importance at stake in this appeal because at its core, the applicant is vexed by the Court of Appeal's application of well-known principles of statutory interpretation and simply wants a third judicial opinion on the matter. This enforcement issue also does not affect a broad cross-section of the public. It affects the SSB and secured creditors. The problem may lie not with the interpretation of the relevant legislation but with its application or adherence by the said stakeholders.

[27] Counsel submitted that the crux of the Court of Appeal's judgment concerned the tenets of statutory interpretation. In the extant case, the issue pivots on the Court of Appeal's application of established principles of statutory interpretation, specifically in defining the term "property" within the Social Security legislative framework. This interpretation aligns with section 2(1) of the IA, encompassing 'money, goods, things in action, land, and all descriptions of property, real or personal,' validating the Social Security Board's right to pursue recovery across all asset types. This definition explicitly includes real property, reinforcing the SSA's recovery rights under section 75 of the ITA, encompassing all asset types. In this case, the Court of Appeal's reasoning is consistent with legislative intent, requiring no further clarification from the Privy Council.

[28] In further addressing the substantive arguments which arise, the respondent argued that section 12 of the IA provides that all statutes are public and judicially noticed, affirming the clear statutory definitions relevant to this case. This statutory mandate upholds that "property" includes all types of assets under the SSA, bolstering the Court's interpretation and the SSB's recovery rights without further appeal. The respondent pointed out that before the Court of Appeal; the Appellant conceded that the IA was relevant to the case. It submitted that that concession, which was correct, is fatal to the argument that "property" should be interpreted in a more limited way.

[29] The statutory interpretation applied by the Court of Appeal is aligned with legislative intent, existing jurisprudence, and the applicable statutory framework. The purposive approach to interpreting statutory provisions aligns with established principles and reinforces the SSA's legislative intent to provide robust recovery mechanisms for unpaid contributions under sections 72 to 77 of the ITA. Section 75 was intended to be read as a stand-alone provision for the purposes of the SSA pursuant to section 44 of the SSA. The other provisions of the ITA and TAPA cannot be used to interpret sections 72 to 77 unless expressly incorporated into the SSA by section 44 of the SSA. Further, the applicant's reliance on TAPA and in particular section 30 to override section 75 of the ITA misinterprets legislative intent. TAPA does not displace the specific enforcement provisions of the ITA as incorporated in the SSA by way of an implied repeal. Established statutory principles dictate that incorporated provisions operate independently unless otherwise specified. This interpretation preserves the SSA's integrity and legislative coherence.

[30] No matter how many times the appellant suggests that there was some novel application of the rules of construction by the Court of Appeal, it does not make it a correct argument. It is the appellant's novel argument that may have overreaching adverse effects, especially regarding the separation of powers doctrine. According to counsel for the respondent, no novel point is being argued here. Rather the applicant is attempting in a roundabout way to invite the Court to engage in legislative redrafting because the basic and general rules of interpretation are not convenient to the applicant.

[31] To accept that section 30 of TAPA applies to the extant matter would also mean that section 49(1) of the SSA must now be repealed as the jurisdiction of the Court for SSB civil claims would no longer rest exclusively with the Magistrate's Court. The High Court would have to be engaged, as required under TAPA. The level and extent of hurdles that the Court, not Parliament, would have to cross to accede to

the applicant's position are not just inconvenient but run afoul of the tenets of statutory interpretation and the separation of powers doctrine.

Court's Analysis and Conclusion

[32] The central question before this Court was whether the applicant has satisfied the jurisdictional gateways relied upon under section 99 of the **St Kitts and Nevis Constitution Order** so as to justify the grant of conditional leave to appeal to His Majesty in Council.[12] In particular, the Court was required to determine whether the proposed appeal engaged (i) a subsisting appeal as of right or (ii) a question of great general or public importance.

[33] The principles applicable to both of these limbs are well settled. The scope and ambit of each of the two limbs were considered in several decisions of this Court and of the Privy Council. The relevant principles were not in dispute, however during the course of the hearing the parties differed as to the application of the principles. The Court will therefore consider the application of the relevant principles in turn.

Section 99(1) (a) – Appeal as of Right

[34] Section 99(1) (a) of the St. Kitts and Nevis Constitution provides for appeals to His Majesty in Council as of right as follows:

> (a) "An appeal shall lie from decisions of the Court of Appeal to [His] Majesty in Council as of right in the following cases -
>
> final decisions in any civil proceedings where the matter in dispute on the appeal to [His] Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards…"

[12] See also: section 3 of the Saint Christopher and Nevis Appeals to Privy Council Order (also referred to as the West Indies Associated States (Appeals to Privy Council) Order 1967).

Is the Decision in Question a Final One?

[35] In St. Kitts and Nevis leave to appeal is required in relation to most appeals from interlocutory decisions in civil proceedings. It is not disputed that the well-known "application test" must be applied in respect of the decision for which the applicant seeks leave to appeal to His Majesty in Council to determine whether decisions are final or interlocutory.

[36] The application test is now codified in the Civil Procedure Rules 2000 ('CPR'), Part 62.1(3) which states simply that:

> "In this Part –
> (a) a determination whether an order or judgment is final or interlocutory is made on the "application test".
> (b) an order or judgment is final if it would be determinative of the issues that arise on a claim, whichever way the application could have been decided; and
> (c) an order on an application for disclosure against a person who is not a party is a final order."

[37] In novel areas this distinction can be a difficult one to discern. Indeed, Lord Denning M.R. once observed, "that the only thing for practitioners to do is to look up the practice books and see what has been decided on the point" (**Salter Rex & Co. v Ghosh**[13]). Where the practice books are silent, resort must be to first principles. Fortunately, the test has been followed in numerous decisions of this Court since then. In **Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail and another**,[14] the Judicial Committee made this plain when it concluded as follows:

> "50. In the BVI [and other States and Territories served by the Eastern Caribbean Supreme Court] it is well established that the application test is used to determine whether a decision is final and this is expressly stated in the applicable civil procedural rules. In accordance with the approach of the Board set out above, it is appropriate for the Board to use that test to determine whether a decision is "final" for the purpose of appeals as of right to the Board under section 3(1) of the 1967 Order. It follows that the Court of Appeal applied the correct test and reached the correct conclusion. Applying the application test the decision in the present case was not a "final" decision and accordingly there is no appeal as of right."

[13] [1971] 2 All E.R. 865 (C.A.).
[14] [2024] UKPC 10; [2024] 4 LRC 354.

[38] At paragraph 11 of the judgment in **Othniel Sylvester v Satrohan Singh**[15] Byron JA (as he then was) summarised the application test in the following terms:

> "Under the application test, an order would be final if it was made on an application which would have determined the matter in litigation for whichever side the decision was given. It is conceded that if the application test was applied the order of Georges J. would be interlocutory, because if he had not set aside the writ and discharged its service, the proceedings would have continued."

[39] This Court in **Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail et al.**[16] would further expound at paragraphs 6 and 7 that:

> "The essence of the application test resulting in an interlocutory order is that the claim, or the subject matter of the application, will come to an end if the application is determined one way, but will continue if it is determined the other way. This is illustrated by the example given by Byron JA – the application to strike out the writ succeeded and the strike out order brought the claim to an end. On the other hand, if the application had failed the claim would have continued. On the other hand, if the result of the application is that the resulting order would determine the matter in litigation for whichever side the decision is given, it is a final order (using the application test). This type of order is usually made at the end of a trial – it disposes of the claim whichever way it is decided. This is a final order and its essence is captured in the first sentence in the dictum of Sir Dennis Byron JA in Sylvester v Singh cited in paragraph [6] above."

[40] This application of principle dovetails with the long-held position in England and Wales where in **Salaman v Warner**[17] Lord Esher, MR had this to say:

> "Taking into consideration all the consequences that would arise from deciding in one way or the other respectively, I think the better conclusion is that the definition which I gave in Standard Discount Co. v. La Grange is the right test for determining whether an order for the purpose of giving notice of appeal under the rules is final or not. The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purpose of these rules, it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute,

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[15] Saint Vincent & the Grenadines Civil Appeal No. 10 of 1992 (delivered 18th September 1995, unreported).
[16] BVIHCMAP2020/0024 (delivered 23rd March 2023, unreported).
[17] (1891) 1 QB 734.

> but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

[41] At page 736 of the report, Fry L.J. stated the test thus:

> "I think that the true definition is this. I conceive that an order is 'final' only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely, I think that an order is 'interlocutory' where it cannot be affirmed that in either event, the action will be determined."

[42] It follows that the context of this matter is important. In the instant matter, the substantive proceedings before the High Court involved an application filed pursuant to section 81 of the TRA, in which the first respondent applied to the court to settle the scheme of division of the sale price. However, the decision from which the applicant seeks leave to appeal was the decision of the Court of Appeal allowing the appeal of the decision of the learned master in the court below.

[43] That learned master's decision followed an interlocutory application in which the applicant sought an order for it to be added to the proceedings. The respondent contended that the applicant had notice in writing by letter dated 19th June 2014 of the respondent's claim of statutory priority to any property owned by Exclusive Retreats Limited which is seized by any creditor. The respondent contends that the applicant acted in bad faith by not responding to its letter of June 19, 2014 in a timely and direct manner, taking steps to settle the scheme of division of the sale price before addressing the respondent's position and by taking steps to settle the scheme of division without giving notice to the respondent. In the alternative, the respondent sought an order that the sale of the property by the applicant was unlawful and null and void for failing to comply with sections 72 to 75 of the ITA. In the further alternative, the applicant sought to be included in the scheme of division of the sale.

[44] The Court of Appeal ultimately set aside the orders made at sub-paragraphs 1 to 3 of paragraph 30 of his judgment and substituted the following the following orders:

(1) The application by the appellant to be added as a party to the proceedings is granted.

(2) A declaration is granted that the debt owing by the second respondent to the appellant in the sum of EC$757,697.92 shall be included in the scheme of division pursuant to section 81 of the TRA of the Sale Price as a debt in priority to the debt owed by the second respondent to the first respondent.

[45] It is noteworthy that what was before the Court of Appeal was an interlocutory appeal which commenced only after the applicant here would have sought and obtained leave to appeal the decision of the learned master in the court below. It appears that this leave application would have been disposed of with very little difficulty, clearing the way for this court to deal with what was indisputably an interlocutory appeal.

[46] Applying the application test, it is clear that decision granting or refusing joinder of a party would be considered an interlocutory order, not a final judgment determinative of the issues which arose on the claim below. This is because the refusal is a procedural determination and would not dispose of the substantive proceedings and not end the litigation. I am further satisfied that for the purpose of determining whether a decision has finally determined those issues or not, in order to make legal sense, whether the order is final or interlocutory must be determined in light of the claim or reliefs before the court and not otherwise and must be referable to rights of the parties in the claim before the court and not just right of the parties in the issue decided.

Is a Decision deciding the Order of Priority of Debts appealable as of right?

[47] As it relates to the second part of this Court's order, neither party provided any authority which directly addresses whether an order which purports to settle a dispute as to priority of debts is automatically appealable as of right. This was

unfortunate given the challenge which the final-interlocutory distinction continues to pose in novel cases. However, I am satisfied that a decision that decides the order of priority of debts — for example, in an insolvency or estate administration — is not automatically appealable as of right. Whether it can be appealed depends on the nature of the order and the stage of the proceedings. For example, in the case of **Re Whistlejacket Capital Ltd (in receivership)**[18], the judge granted permission to appeal to certain parties involved in the dispute over the priority of debts.

[48] Although by no means a binding authority, I am further guided by the Australian case of **Carter Holt Harvey Woodproducts Australia Pty Ltd v The Commonwealth**[19] **('Re Amerind')**. In that case, Amerind Pty Ltd was the trustee of a trading trust. It carried on business solely in that capacity, and so it held only trust assets and trust liabilities. As trustee, it owed money to a secured creditor, employees and various other unsecured creditors. The secured creditor, a bank, held a registered PPSA security interest over various assets, including ADI cash trade accounts, funds paid under a factoring arrangement, and tax refunds and other miscellaneous receivables. Amerind subsequently encountered financial difficulties. The bank appointed receivers, the company went into liquidation and the Commonwealth paid the employees their accrued entitlements under the FEG Scheme. The Receivers realised sufficient non-circulating assets to discharge the debts owed to the first ranking secured creditor in full but not those of the second ranking secured creditor, Carter Holt Harvey Woodproducts Australia Pty Ltd ("Carter Holt"). Additional circulating asset realisations were then made from the sale of the Company's inventory, and after paying the costs of realisation, there was approximately $1.6 million available for distribution to the Company's creditors ("the Surplus"). During the Liquidation process, the Commonwealth Department which administers the Fair Entitlements Guarantee Scheme (FEG), had funded substantial distributions to former employee creditors of the Company and claimed priority by right of subrogation over the Surplus. Carter Holt, in its capacity as the

[18] [2008] EWCA Civ 575.
[19] (2019) 93 ALJR 807.

second ranking secured creditor, also claimed priority over the Surplus. The Receivers applied to the Supreme Court of Victoria for directions regarding the distribution of the Surplus. At first instance, the trial judge found for the other unsecured creditors.

[49] The Commonwealth sought leave to appeal from the trial judge's orders, contending that the surplus was not trust property and that it should be applied in accordance with the priority regime. Carter Holt contended that the Commonwealth was not entitled to priority because section 433 did not apply. The Court of Appeal noted that the issue of how a corporate trustee's right of indemnity (out of the trust's assets for the liabilities it incurred as trustee) is to be dealt with upon a winding up, or where s 433 applies, is one of long-standing controversy. The five-member panel of the Victoria Court of Appeal unanimously granted leave to appeal and allowed the appeal in Commonwealth of **Australia v Byrnes and Hewitt as receivers and managers of Amerind Pty Ltd (receivers and managers apptd) (in liq).**[20]

[50] On 17th August 2018, dissatisfied with this decision, of the Victorian Court of Appeal constituted by five Judges, Carter Holt sought and was granted special leave to appeal to the High Court of Australia which ultimately resolved whether the trustee's right, or the interest conferred by that right, falls for distribution among the trustee's creditors under or outside the Corporations Act 2001, when a corporate trustee is wound up in insolvency.

Does the Appeal involve directly or indirectly a Claim to or question respecting Property or a Right of the prescribed value or upwards?

[51] The applicant contends that there is no dispute that the intended appeal involves, directly or indirectly, a claim to or question respecting property or a right of the prescribed value or upwards. Counsel for the applicant submitted that the applicant is the holder of a mortgage against land of Exclusive Retreats Limited. This is a property right which is directly or indirectly involved in the decision. The proceeding

[20] [2018] VSCA 41; (2018) 54 VR 230.

in the court below was a mortgagor enforcement claim. After the sale occurred and the scheme of division was settled, the respondent intervened to assert that its claims against the mortgagor had priority over the applicant's mortgage.

[52] In support of this contention, the applicant placed considerable reliance of the Judicial Committee's guidance in **Sian Participation Corp (In Liquidation) v Halimeda International Ltd.**[21] However, I am not satisfied that this judgment assists the applicant so as to entitle it to an "as of right" appeal when properly understood. The **Sian Participation** case concerned an appeal from a winding up order. At paragraph 115, the Judicial Committee observed:

> "Wallbank J relied upon the unpaid Debt, and the absence of any genuine and substantial dispute, as evidence that the appellant was insolvent. He did not need to, and did not, purport to make any determination of either the duty to pay or the right to be paid. The respondent will still need to prove for the Debt in the liquidation. As explained in para 33 above, the process of seeking and obtaining an order for the appointment of a liquidator (or a winding up in the UK) does not require or involve any pursuit or adjudication of the applicant's claim to be a creditor, either as to liability or quantum."

[53] At paragraph 117 of the judgment, the Board cited the recent decision of the Cayman Islands Court of Appeal in **Re Virginia Solution SPC Ltd**[22] **("Virginia Solution")**, a case which involved an appeal by a shareholder against the discharge of a winding up order that had been made on the grounds that it had been just and equitable to do so.

[54] Although cited by the applicant in support of its application, again, in my view this judgment provides little assistance to the applicant as it makes plain that in order to establish that it is entitled to leave as of right; the applicant must bring its claims under this limb. The Cayman Islands Court of Appeal in that judgment indicated that 'the focus of the limb is on claims or questions which are directly or indirectly 'involved' in the putative appeal. This implies matters which are in dispute, and which will be directly or indirectly resolved by the outcome of the appeal….'

[21] [2023] UKPC 16.
[22] CICA (Civil) Appeal No. 4 of 2024 (delivered 10th November 2023, unreported).

[55] In that case, the applicant relied on its claim to share in the company's surplus assets as a valuable right that the appeal would involve. The court held (per Martin JA, with whom Goldring P and Moses JA agreed) that it would not do so.

[56] In this case, the Court of Appeal's focus was the interpretation of statutes (**Income Tax Act**, **Social Security Act**, and **Tax Administration** and **Procedures Act**), addressing the statutory mechanisms and priority right for enforcing civil debts owed to the Social Security Board. I find much force in the respondent argument that while monetary amounts are involved, the focus was procedural rather than an adjudication of property entitlement exceeding the statutory monetary threshold for direct appeal, making the "value" argument peripheral. I find support for this position in the Privy Council decision in **Junkanoo Estate Ltd v UBS Bahamas Ltd**,[23] the Privy Council held that leave to appeal was required when seeking to enforce mortgage property rights. In **Junkanoo***,* the appellants sought leave to appeal to the Privy Council concerning a mortgagee's action initiated by UBS for possession of residential property in the Bahamas. UBS claimed that Junkanoo Estates defaulted on a $1.4 million loan, while the defendants argued the defaults were caused by UBS's own contractual breaches in managing invested funds. UBS obtained a summary judgment in the Bahamian Supreme Court. When the defendants tried to appeal this summary judgment, they failed to seek the necessary leave to appeal, which resulted in the Court of Appeal dismissing the appeal. The Board denied leave on the basis that it generally reserves leave for issues of broad legal importance or cases with significant implications. In **Junkanoo***,* the procedural nature of the errors did not satisfy this threshold, as the issues raised were confined to the appellants' specific circumstances.

[57] I am therefore satisfied that the appeal does not fall within section 3(1)(a) of the 1967 Order. The decision of this Court did not determine the matter in litigation for either of the parties. Had the decision of this Court been otherwise, the proceedings

[23] [2017] UKPC 8.

below would have continued. The order in this appeal is not the kind which would trigger an automatic right of appeal under the general rules of appeal. Consequently, the applicant cannot ground his appeal to His Majesty in Council in section 99 (1) (a) of the Constitution because the order of the Court of Appeal is not a 'final decision' which is a necessary condition for the grant of leave under that section.

Section 99(2) (a) – Special Leave

[58] Section 99(2) (a) of the Constitution provides as follows:

> "Subject to section 36(7), an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases —
>
> decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council …"

[59] It is settled law that the test of what is meant by the expression; …of great general or public importance' warranting permission to appeal to the Privy Council is whether the questions or issues in the appeal involve a 'difficult question of law'. In construing the said expression, a court would usually look for matters that involve 'a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or a legal question the resolution of which poses dire consequences to the public.' See: **Martinus Francois v The Attorney General of Saint Lucia** before the Court.[24] In **Renaissance Ventures Ltd et al v Comodo Holdings Ltd**[25] this Court provided further elucidation on the meaning of the expression 'great general or public importance'. The applicable principles were summarised in the following terms -

> "[10]….Where there is no genuine dispute on the applicable principles of law underlying the question which the applicant wishes to pursue on his or her proposed appeal, a question of great general or public importance does not ordinarily arise, especially where the principle of law is settled either by

[24] Saint Lucia Civil Appeal No. 37 of 2003 (delivered 7th June 2004, unreported); and see: Douglas and Other v Pindling (1996) 48 WIR 1.

[25] BVIHCMAP2018/0005 and BVIHCMAP2018/0008 (delivered 8th October 2018, unreported).

> the highest appellate court or by longevity of application. **Where the principle is one established by this Court but is either unsettled, in the sense that there are differing views or conflicting dicta, or there is some genuine uncertainty surrounding the principle itself, or it is considered to be far reaching in its effect, or given to harsh consequences, or for some other good reason would benefit from consideration at the final appellate level, this Court would be minded to seek the guidance of their Lordships' Board. Where, however, the real question on the proposed appeal is the way this Court has applied settled and clear law to the particular facts of the case, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted on this ground.** In such a case, the question on the proposed appeal may be of great importance to the aggrieved applicant, but it would not for that reason alone be a question of great general or public importance.
>
> [11] It follows as well that **the question of law which is said to be of great general or public importance must genuinely arise from the way the case was decided in the Court of Appeal. The question must be 'involved' in the appeal.** Such a question cannot arise if it was not raised on the appeal, or if the principle of law which the applicant wishes to have settled by the highest court has not been put in doubt." (Emphasis added)

[60] In the matter before this Court, the applicant has identified at least eight issues of law forming part of the *ratio decidendi* of the judgment of the Court of Appeal which are novel or at least doubtful or not settled. It further contends that the decision of the Court of Appeal is manifestly of general public importance in that it affects the priority of mortgages of secured creditors, including banks, credit unions, and other credit institutions.

[61] Counsel or the applicant submitted that the Court of Appeal decision radically changed the previously held status quo in which the local Bar would have held the view that section 75 of the ITA applied only to personal property. This decision upended that understanding and the consequence of that finding is such that the respondent has been held to have a priority right to the extent of $757,697.92 on the foreclosure of a property that was sold for US$540,000.00 (EC$1,458,000.00). Counsel has submitted that the deleterious impact in the secured lending market justifies granting special leave.

[62] Counsel for the respondent on the other hand submitted that the issue pivots on the Court of Appeal's application of basic principles of statutory interpretation, specifically in defining "property" within the social security legislative framework. Counsel robustly asserts that no novel point is intended to be argued here. Instead, the applicant is simply dissatisfied with the result of the Court applying the well-established principles of statutory construction.

[63] Having considered the judgments at first instance and in this Court, and after applying the now well-established principles in **Renaissance Ventures,** I am inclined to the view that leave should be granted under this limb.

[64] Again, the relevant context in the court below is a mortgagor enforcement claim. After the sale occurred and the scheme of division was settled, the respondent intervened to assert that its claims against the mortgagor had priority over the applicant Bank's mortgage. This matter involves the application of a cross section of various statutes, in determining whether the appellant (which is a statutory body established under the social security legislation) has priority in seizing and selling the Exclusive Retreats' property in order to recover outstanding statutory contributions.

[65] The *mutatis mutandis* application of section 70-75 of the Income Tax legislation presented a complication which required judicial interpretation in determining the remit of the "property" which may be applied to satisfy the civil debt (outstanding contributions). The term is undefined under the social security legislative framework, but it is somewhat defined under the provisions of the ITA which are to be applied mutatis mutandis.

[66] The High Court judge found the word "property" as defined in section 75 of the ITA did not include real property, rather it referred to movable property, good and chattels of the debtor. This Court disagreed with that conclusion advocating instead

a purposive interpretation and the application of the provisions of the IA which defines the term "property".

[67] The High Court further held that even if the term "property" as defined in section 75 of the ITA did include real property, by virtue of section 30 of the TAPA, the lien for the unpaid contributions due and owing to the respondent, if any, did not rank in priority to any debt owed to the applicant Bank which is a secured creditor. The learned judge would have concluded that the right of the Director to sell property is subject to the provisions of the TAPA; and section 3 of the TAPA must be read in line with section 44 of the SSA and sections 72 to 77 of the ITA. Again, this Court came to a contrary conclusion. This brings into focus the issue of whether the TAPA has any application to the SSA.

[68] Where a litigant seeks leave to appeal to the Privy Council which is largely based on a question of statutory interpretation, this usually requires demonstrating that the issue is of 'great general or public importance.' This means that the case must transcend the immediate dispute between the parties and impact the interpretation of laws for the common good. I am satisfied that this appeal meets this threshold. This case concerns the statutory priority regimes under the SSA which intersects with the ITA and the TAPA.

[69] Given the dearth of relevant case law, I am satisfied that the public would benefit from a definitive pronouncement on the application of the statutory priority regimes which prioritise social security contributions in this jurisdiction. I am further satisfied that this matter obviously impacts the priority of mortgages of secured creditors, including banks, credit unions, and other credit institutions and that in the field of commercial/banking law, the need for certainty exists. For these reasons, the application raises a genuinely disputable and substantial issue of great general or public importance.

Disposition

[70] I would accordingly make the following orders:

(1) Conditional Leave is granted to the Applicant to appeal to His Majesty in Council against the judgment of the Court of Appeal delivered on 25th July 2024 on the following terms and statutorily prescribed conditions:[26]

(a) The application is granted on the basis that the question involved in the appeal is one which, by reason of its great general or public importance, ought to be submitted to His Majesty in Council.

(b) Security for Costs: The applicant do within 90 days from the date of this order enter into good and sufficient security in the sum of £500 to the satisfaction of the Registrar for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Applicant not obtaining an order granting it final leave to appeal, or of the appeal being dismissed for non-prosecution.

(c) Preparation of Record: The applicant do take all necessary steps to prepare the Record of Proceedings and submit the same to the Registrar within 90 days of the date on which this judgment is delivered for settlement. The said records, which are to be settled with Solicitors for the respondent and transmitted to the Registrar of the Privy Council, shall be comprised of the Record used at the hearing of the appeal, save documents of a formal nature and omitted by the consent of the parties; the judgments; the Orders of the Court of Appeal, and the Orders granting conditional and final leave to appeal to His Majesty in Council.

[26] See: section 5 of the Saint Christopher and Nevis Appeals to Privy Council Order 1967.

(2) Costs of this application shall be costs in the appeal.

I concur.
Eddy D. Ventose
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar