COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCivApp No. 110 of 2022

BETWEEN

BUCKEYE BAHAMAS HUB LIMITED

Appellant

AND

PEDRO KNOWLES

1st Respondent

AND

SYNGAD SERVICES LIMITED

2nd Respondent

BEFORE: **The Honourable Mr. Justice Milton Evans, JA**
The Honourable Madam Justice Indra Charles, JA
The Honourable Mr. Justice Bernard Turner, JA

APPEARANCES: **Mr. Oscar Johnson, Jr. KC, with Mr. Keith Major, and Ms. Dennise Newton, Counsel for the Appellant**
Mrs. Gia Moxey-Lockhart, Counsel for the 1st Respondent
Ms. Camille Cleare, Counsel for the 2nd Respondent (present but not participating)

DATES: **17 April 2024; 21 May 2024**

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Civil Appeal- Application for reconsideration of a concluded appeal – Jurisdiction to re-open a concluded appeal under ***Re Barrell*** *and/or* ***Taylor v Lawrence*** jurisdiction *– Exceptional circumstances – Residual jurisdiction – Real injustice – Material irregularity* - *Whether the appellant has alternative effective remedy –Interests of justice –Finality in Litigation*

On 23 November 2023, the Appellant filed an application supported by the affidavit of Mark Barrett seeking, *inter alia*, for this Court to reconsider and reverse its decision delivered on 20 November 2023 ("the Judgment") whereby we dismissed the appellant's appeal from a decision of the learned Chief Justice. The appellant contends that under the jurisprudence of **Re Barrell Enterprises** [1972] 3 All ER 631 and/or **Taylor v Lawrence** [2002] EWCA Civ 90, [2003] QB 528, the Court is at liberty to amend or alter the Judgment or otherwise deal with the application for reconsideration in a manner its sees fit since the order of the court was not perfected. Further, the appellant contends that the Court (i) fell into grave and profound errors of fact thereby resulting in an ultimately erroneous decision on the merits of the appeal in contravention to the true position; (ii) mixed up the names of two separate and distinct companies and, as a result, made grave and profound errors; (iii) misapprehended that Borco International changed its name to Buckeye after

the commencement of litigation which begun in 2017 when in effect it was in 2016 and (iv) did not consider the doctrine of implied repeal. Consequently, says the appellant, the Court's decision is erroneous and ought to be reconsidered and reversed.

Held: Application for reconsideration is refused. The application to stay was withdrawn and is dismissed. No order as to costs.

The Order of the Court was perfected on the same day of the hearing on 20 November 2023. The Court is in possession of the perfected Order. However, the appellant, upon whom the burden rests, did not see it fit to inquire of the Registrar whether the Judgment of the Court had been perfected. It is settled law that '*he who asserts a fact must prove the existence of that fact, otherwise he would not be entitled to the judgment of the Court.'*

The Order having been perfected, the Court's jurisdiction has been exhausted. Put differently, the Court is *functus officio* and has no further power to reconsider or vary our decision. The **Re Barrell jurisdiction** is therefore unavailable to the appellant and the application for reconsideration under this jurisdiction is refused.

In order to invoke the **Taylor v Lawrence** jurisdiction, Buckeye has to satisfy us that the present application meets the following criteria which are cumulative:

(a) It is necessary to do so in order to avoid real injustice;

(b) The circumstances are exceptional and make it appropriate to re-open the appeal and;

(c) There is *no alternative effective remedy***.**

It was incumbent on Buckeye to demonstrate that the circumstances of their case was exceptional and it was appropriate to reopen the appeal. There is nothing to suggest that the Judgment is a nullity. It follows that any complaint of mistakes in the Judgment must be heard and determined by a higher Court.

The appellant has not shown that there were any procedural or administrative errors that resulted in substantial injustice. The gravamen of its complaint is that the Court fell into grave and profound errors of fact thereby resulting in an ultimately erroneous decision on the merits of the appeal in contravention to the true position. Simply put, the Court got it wrong. In the present application, all that the appellant has done is to reargue to reargue the same points which it argued before us in the Judgment. That cannot be permitted and, if permitted, would destroy the fundamental common law principle of finality in litigation.

The appellant has made no attempt to challenge the Judgment to the Privy Council. It has an alternative remedy to redress its complaint of grave and profound errors of fact by way of an appeal to the Privy Council. The jurisprudence makes it clear that in cases where the appellant has the ability to challenge the decision of the Court of Appeal to a higher court like the Privy Council, the Court is less likely to exercise this implicit jurisdiction.

For all of these reasons, the application to reconsider or re-open the appeal must be refused.

YP Seaton et al v Sagicor Bank Jamaica Limited [2019] JMCA App.1 distinguished
Rosina Smith v Fidelity Bank (Bahamas) Limited SCCivApp. No. 122 of 2020 considered
Belgravia International Bank & Trust Company Limited & anor v Sigma Management Bahamas Ltd & anor SCCivApp. No. 75 of 2021 distinguished
Ladd v Marshall [1954] 1 WLR 1489 mentioned
The Queen v Gilbert Henry [2018] CCJ 21 (AJ) considered
Stewart v Engel [2000] 3 All ER 518 considered
Compagnie Noga D'Importation et D'exportation SA v Abacha (No. 2) [2001] 3 All ER 513 mentioned
Re Barrell Enterprises [1972] 3 All ER 631 applied
Taylor v Lawrence [2002] EWCA Civ 90, [2003] QB 528 applied
Edney Burrows Jr & Thaddeus Williams Jr. v Regina SCCrApp. Nos. 12 & 13 of 2021 considered
Omar Archer v Commissioner of Police MCCrApp. No. 140 of 2017 considered
Daniel Coakley v Regina SCCrApp. No. 15 of 2017 considered
Junkanoo Estates Ltd et al v UBS (Bahamas) Ltd (In Voluntary Liquidation) SCCivApp. No. 24 of 2018 considered

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REASONS FOR DECISION

Judgment delivered by the Hon. Madam Justice Charles, JA:

1. The appellant ("Buckeye") filed a Notice of Motion on 23 November 2023 seeking, principally, a reconsideration and reversal of a decision of this Court delivered on 20 November 2023 ("the application"). On 17 April 2024, we heard the application and refused it. We promised to put our reasons in writing. We do so now.

Background

2. There is no need to recapitulate the background to this case as it was sufficiently set out in the judgment of the court rendered on 20 November 2023 ("the Judgment"). It suffices to say that the claim in this case, in the respects relevant to this application, was that, on 10 April 2014, the 1st Respondent ("Knowles") was injured on the job while performing his duties. He subsequently brought a personal injury action against the 2nd Respondent (Syngad") (1st Defendant in the action below) and Bahamas Oil Refining Company Limited ("Borco Bahamas") (2nd Defendant in the action below) on 10 April 2017 which was the last day before the limitation period on the claim expired. On 17 March 2022, Knowles sought to amend his pleadings to (i) correct the name of Borco Bahamas and (ii) add Buckeye as a defendant to the action. There was a separate and distinct company called Borco Oil Refining Company International Limited ("Borco International") which changed its name to Buckeye in 2016, a year before the personal injury action was commenced.

3. Before the learned Chief Justice, Buckeye contested the amendment, arguing that it was made outside of the statute of limitations. The learned Chief Justice allowed the amendment to add Buckeye to correct what he saw as a misnomer which was the result of a genuine mistake. Buckeye appealed, arguing that the learned Chief Justice (i) erred by allowing Knowles to amend to name Buckeye as a defendant after the limitation period had expired and that this was the incorrect application of the rules on joinder and amendment since the amendment unfairly deprived Buckeye of its limitation defence and (ii) exceeded his powers by overriding the statutory limitation period.

4. As previously stated, we dismissed Buckeye's appeal. Borco Bahamas had been struck off and no longer existed and Borco International had merged into Buckeye. Buckeye was added as the answers to interrogatories confirmed that they were the party in charge of the operation when the accident occurred and accordingly was the obvious and necessary party to be named. We were made aware from the evidence before us that Borco Bahamas and Borco International were not the same party. The reference to the same party meant Borco International and Buckeye.

5. We further found that the learned Chief Justice properly exercised his discretion to allow the amendment to correct a misnomer and that Order 20 Rule 5 is not in conflict with the requirements of the Limitation Act. For these reasons, we opined that the learned Chief Justice was entitled to rely on Order 20 Rule 5 in granting the amendment which permits amendments to fix mistakes, even if made after a limitation period expires. There was no unfair prejudice to Buckeye in having to defend the case under its current name.

6. On 20 November 2023, the Registrar perfected the Order of the Court by issuing a "Certificate of the Order of the Court."

The Application for Reconsideration

7. The Application for Reconsideration, filed on 23 November 2023, was supported by the affidavit of Marc Barrett filed on 13 February 2024. The nub of the Application, reiterated in Mr. Barrett's affidavit, is for this Court to reconsider and reverse its Judgment on the basis that it fell into grave and profound errors of fact thereby resulting in an ultimately erroneous decision on the merits of the appeal in contravention to the true position. The errors of fact identified are summarized as follows:

    (i) At paragraph 15 of the Judgment, the learned Justices erred in fact by misapprehending that the name of the 2nd Defendant in the action below, Borco Bahamas was changed to Buckeye. This is a patent error as Borco Bahamas and Borco International were two distinct and separate legal entities with different company registration numbers.

    (ii) At paragraph 17 of the Judgment, the learned Justices of Appeal erred in fact by misapprehending that Borco International changed its name to Buckeye subsequently to the commencement of litigation which began in 2017. This is a patent error and a finding which goes against the preponderance of evidence.

(iii) At paragraph 17 of the Judgment, the learned Justices of Appeal erred in fact by misapprehending that the case at bar was one that did not include *"two coexisting parties and the wrong one was named."* This is a patent error and a finding which goes against the preponderance of evidence.

(iv) In rendering the Judgment, the learned Justices of Appeal fell into grave and profound errors in that they fail to consider the key issue of the doctrine of implied repeal.

(v) Having fallen into grave and profound errors, the learned Justices of Appeal were led into determination upon the above-listed misapprehensions. Such a state of affairs represents a miscarriage of justice and renders the Judgment one which cannot be supported as safe in the circumstances. The maintenance of the said state of affairs runs contrary to the dual principal objectives of an appellate court: (i) to correct wrong decisions so as to ensure justice between the litigants involved and (ii) to ensure public confidence in the administration of justice not only by remedying wrong decisions but also by clarifying and developing the law and setting precedents.

8. Under the jurisprudence of **Re Barrell Enterprises** [1972] 3 All ER 631 and/or **Taylor v Lawrence** [2002] EWCA Civ 90, [2003] QB 528, Buckeye asks this Court to reconsider and reverse the Judgment whereby we dismissed Buckeye's appeal from a decision of the learned Chief Justice.

9. Against this backdrop, we examine the **Re Barrell** jurisdiction as well as the **Taylor v Lawrence** jurisdiction.

Discussion

Re Barrell Jurisdiction

10. With respect to the **Re Barrell** jurisdiction, a Court is seized with jurisdiction to reverse/reconsider its decision at any time before the order is drawn up and perfected but not afterwards. As a matter of principle, a Court retains control of a case to the extent of being able to reconsider the matter of its own motion or to hear further argument on a point which has been decided even after judgment had been handed down (but before the order has been perfected).

11. However, once the court has made and perfected the order, only in exceptional circumstances should a court be invited to reverse a reasoned decision since an appeal, where it exists, is the more appropriate course in such a situation: **Compagnie Noga D'Importation et D'exportation SA v Abacha (No. 2)** [2001] 3 All ER 513, following the approach adopted in **Re Barrell.** Russell LJ had this to say in **Re Barrell** at p. 636:

> "**When oral judgments have been given, either in a court of first instance or on appeal, the successful party ought *save in most exceptional circumstances* to be able to assume that the**

> **judgment is a valid and effective one. The cases to which we were referred in which judgment in civil courts have been varied after delivery (apart from the correction of slips) were all cases in which some most unusual element was present."** [Emphasis added]

12. It is therefore beyond question that the court's power to review and change its mind on a conclusion at any time before the order is drawn up is well established: **Stewart v Engel** [2000] 3 All ER 518. In that case, Sir Christopher Slade stated at p. 525:

> **"Since there must be some finality in litigation and litigants cannot be allowed unlimited bites at the cherry, it is not surprising that, according to the authorities, there are stringent limits to the exercise of the discretion conferred on the court by the Barrell jurisdiction."**

13. In **The Queen v Gilbert Henry** [2018] CCJ 21 (AJ), a criminal appeal emanating from Belize to the Caribbean Court of Justice, Mr. Henry was convicted of causing dangerous harm and sentenced to five years imprisonment. His appeal was heard almost five years later on 14 March 2017. On 22 March 2017, an order was delivered orally by the Court of Appeal dismissing the appeal and affirming the conviction and sentence. The Court added that its reasons would follow. A written judgment was ultimately delivered on 16 June 2017, in which the Court of Appeal allowed the appeal and quashed the conviction. The written judgment did not mention the earlier oral decision which had dismissed the appeal. In the period between the oral decision and the written judgment, no steps were taken to draw up and formally record what was orally stated.

14. The Director of Public Prosecutions sought special leave from the CCJ to appeal the written judgment. The proposed appeal argued that, having delivered the oral decision, the court became *functus officio* and therefore had no jurisdiction to deliver the subsequent contrary written decision. In delivering the judgment of the Court, Mr. Justice Anderson, at para. 17 had this to say:

> **"...[T]he Court begins from the widely accepted principle that there must be finality to litigation. Judicial decisions must confer certainty and stability. People who are affected need to know where they stand. They must be able to order their affairs in the sure knowledge that the word of the court is the final word on their legal rights and responsibilities. However, a second principle is equally uncontroversial. The principle of finality cannot be applied in an unyielding manner if that application results in injustice.…It is thus settled law that a court has an inherent power to even reopen a criminal appeal to ensure that justice is done. Thus, both principles are required to ensure**

public confidence in the administration of justice."[Emphasis added]

15. Having analyzed **Re Barrell** and other kindred cases, Mr. Justice Anderson extrapolated the following principles, at para. 23:

> **(a) "An oral decision or order made by a judge is normally binding from the moment it is delivered. It has legal force and parties are entitled to rely upon it….**
>
> **(b) The court retains a residual jurisdiction to vary its earlier decision until the order of the court is recorded or otherwise perfected. That jurisdiction is exercisable on narrowly defined principles. There must be exceptional circumstances warranting its exercise. A relevant factor in deciding whether the jurisdiction should be exercised is whether any party has acted upon it to his or her detriment, especially in a case where it is expected that he or she may do so before the order is formally drawn up. The court should normally invite submissions (which may be written submissions) from the parties affected by the earlier decision and should in its subsequent decision, refer to the earlier decision and explain its reasons for varying or overturning it; and**
>
> **(c) The court is *functus officio* once the order has been recorded or otherwise perfected. Thereafter remedy for errors in the judicial process lies in the appellate process."** [Emphasis added]

16. The **Re Barrell** jurisdiction has been recognized by our Court of Appeal: see for example, **Rosina Smith v Fidelity Bank (Bahamas) Limited** SCCivApp. No. 122 of 2020; **Belgravia International Bank & Trust Company Limited & anor v Sigma Management Bahamas Ltd & anor** SCCivApp. No. 75 of 2021.

17. Both parties accept these legal principles.

18. Mr. Major, appearing as Counsel for Buckeye, submits that since the Order has not been perfected, this Court is free to amend or alter the Judgment or otherwise deal with the application for reconsideration in a manner it sees fit. He relies on the case of **YP Seaton et al v Sagicor Bank Jamaica Limited** [2019] JMCA App. 1. McDonald-Bishop JA held:

> **"24. It is clear, therefore, that *had the order been perfected, by the issuing of the certificate of result of appeal, we would have been rendered functus officio. However, the order has not been perfected in this case."***

19. Mr. Major also relies on **Belgravia.**

20. As is readily apparent from these two decisions, in the exercise of its jurisdiction, in each case, the Court was influenced by the fact that the order had *not* yet been perfected. A different situation presents itself in the present appeal. We are in possession of a Certificate of the Order of the Court dated 20 November 2023 and signed by the Registrar. Neither party saw it fit to inquire of the Registrar whether the Judgment of the Court has been perfected. That said, the onus rests on Buckeye to do so since it is settled law that '*he who asserts a fact must prove the existence of that fact, otherwise he would not be entitled to the judgment of the Court*'.

21. The Order having been perfected, we are of the opinion that our jurisdiction has been exhausted. In other words, we are *functus officio* and have no further power to reconsider or vary our decision. This principle accords with the fundamental principle that the outcome of litigation should be final.

22. In the circumstances, Buckeye is unable to invoke the **Re Barrell** jurisdiction. Its application for reconsideration is accordingly refused.

Taylor v Lawrence jurisdiction

23. Buckeye also relies on the **Taylor v Lawrence** jurisdiction. In that case, the English Court of Appeal considered the scope of its power to reopen a concluded appeal after it had given a final judgment which had been drawn up. The defendants in **Taylor v Lawrence** appealed on the grounds of apparent bias on the part of the judge below. The appeal was dismissed. The defendants later discovered fresh facts relating to the apparent bias that had previously been alleged and sought to reopen the appeal.

24. Foremost in the court's mind was the long standing, fundamental common law principle that the outcome of litigation should be final, a principle which is frequently put to the test by claims that fresh evidence has been discovered which, if available during the trial, might have influenced the result – the rule in **Ladd v Marshall** [1954] 1 WLR 1489 at para. 6 of the Judgment. The court concluded that it has an implicit jurisdiction to reopen a concluded appeal *in exceptional circumstances* where it was necessary to achieve its two principal objectives. In explaining the court's conclusion, Lord Woolf CJ said:

> **"26….this court was established with two principal objectives. The first is a private objective of correcting wrong decisions so as to ensure justice between the litigants involved. The second is a public objective, to ensure public confidence in the administration of justice not only by remedying wrong decisions but also by clarifying and developing the law and setting precedents."**

25. Lord Woolf CJ continued:

> **"50. If, as we believe it is necessary to do, we go back to first principles, we start with the fact which is uncontroversial, that the Court of Appeal was established with a broad jurisdiction to hear appeals. Equally it was not established to exercise an originating as opposed to an appellate jurisdiction. It is therefore appropriate to state that in that sense it has no inherent jurisdiction. It is, however, wrong to say that it has no implicit or implied jurisdiction arising out of the fact that it is an appellate court. As an appellate court it has the implicit powers to do that which is necessary to achieve the dual objectives of an appellate court to which we have referred already (see para 26 above)** [Emphasis added].

26. At paras. 54 to 56, Lord Woolf CJ categorized the jurisdiction as "the residual jurisdiction" and stated:

> **"54. ....It is very easy to confuse questions as to what is the jurisdiction of a court and how that jurisdiction should be exercised. The residual jurisdiction which we are satisfied is vested in a court of appeal to avoid real injustice in exceptional circumstances is linked to a discretion which enables the court to confine the use of that jurisdiction to the cases in which it is appropriate for it to be exercised. There is a tension between a court having a residual jurisdiction of the type to which we are here referring and the need to have finality in litigation. The ability to reopen proceedings after the ordinary appeal process has been concluded can also create injustice. There therefore needs to be a procedure which will ensure that proceedings will only be reopened when there is a real requirement for this to happen.**
>
> **[55] One situation where this can occur is a situation where it is alleged, as here, that a decision is invalid because the court which made it was biased. If bias is established, there has been a breach of natural justice. The need to maintain confidence in the administration of justice makes it imperative that there should be a remedy. The need for an effective remedy in such a case may justify this court in taking the exceptional course of reopening proceedings which it has already heard and determined. What will be of the greatest importance is that it should be clearly established that a significant injustice has probably occurred and that there is no alternative effective remedy. The effect of reopening the appeal on others and the extent to which the complaining party is the author of his own misfortune will also be important considerations. Where the**

> **alternative remedy would be an appeal to the House of Lords this court will only give permission to reopen an appeal which it has already determined if it is satisfied that an appeal from this court is one for which the House of Lords would not give leave.**
>
> **[56] Today, except in a few special cases, there is no right of appeal without permission. The residual jurisdiction which we have been considering, is one which should only be exercised with the permission of this court. Accordingly a party seeking to reopen a decision of this court, whether refusing permission to appeal or dismissing a substantive appeal, must apply in writing for permission to do so. The application will then be considered on paper and only allowed to proceed if after the paper application is considered this court so directs. Unless the court so directs, there will be no right to an oral hearing of the application. The court should exercise strong control over any such application, so as to protect those who are entitled reasonably to believe that the litigation is already at an end."**[Emphasis added]

27. The residual jurisdiction of an appellate court discussed in **Taylor v Lawrence** has been adopted and restated by our Court of Appeal in numerous criminal as well as civil cases: see **Edney Burrows Jr & Thaddeus Williams Jr. v Regina** SCCrApp. Nos. 12 & 13 of 2021 per Sir Michael P at paras 13 -21; **Omar Archer v Commissioner of Police** MCCrApp. No. 140 of 2017 per Sir Michael at paras 20-36; **Daniel Coakley v Regina SCCrApp.** No. 15 of 2017; **Junkanoo Estates Ltd et al v UBS (Bahamas) Ltd (In Voluntary Liquidation)** SCCivApp. No. 24 of 2018 per Crane-Scott at paras 47-54 and **Belgravia**. In the latter case, this Court, differently constituted, was satisfied that it was clothed with the jurisdiction to reopen/reconsider a concluded appeal.

28. As seen, the jurisprudence is plentiful that the court has the implicit jurisdiction to reopen a concluded appeal but the exercise of the jurisdiction must be restricted to exceptional circumstances.

29. In the present appeal, the starting point is that the Order of the Court was perfected. While Buckeye hung its hat on **Belgravia**, the difference is that, in **Belgravia**, the Order of the Court was not perfected. Isaacs JA, writing the Judgment of the Court said:

> **"4. The Court in *Duran Cunningham* was influenced in the exercise of its jurisdiction by the fact that the decision made orally had not yet been perfected. Similarly, in the present case, it has not been shown that the judgment of the Court has been perfected."** [Emphasis added]

30. In order to invoke the **Taylor v Lawrence** jurisdiction, Buckeye has to satisfy us that the present application meets the following criteria which are cumulative:

(d) It is necessary to do so in order to avoid real injustice;

(e) The circumstances are exceptional and make it appropriate to re-open the appeal and;

(f) There is **no alternative effective remedy**. [Emphasis added]

31. In our view, **Taylor v Lawrence** implicitly recognizes, that in fashioning a fair rule relating to the reopening of perfected orders of a court on appeal, the legal system as a whole must be assessed. In cases where this Court is the final appellate court, such as appeals from the Magistrates Court and where there is no other avenue of redress and where there is a real danger that substantial injustice has been done, the fair rule upholds the right of access to the court to remedy violations of natural justice. In other words, the Court is more likely to reopen the appeal. Where, however, the appellant has the ability to challenge the decision of the Court of Appeal to a higher court, for example, the Privy Council, the court is less likely to exercise this implicit jurisdiction. No doubt, this is premised on the fundamental common law principle that the outcome of litigation should be final.

32. Therefore, it is incumbent on an appellant to demonstrate that the circumstances of their case are exceptional and it is appropriate to reopen the appeal. In the present case, there is nothing to suggest that the Judgment is a nullity. It follows that any complaint of mistakes in the Judgment must be heard and determined by a higher Court.

33. The next exception is whether the Judgment should be set aside on the ground of real injustice. There is nothing in this application to suggest that there were any procedural or administrative errors and that those errors resulted in substantial injustice. The gravamen of Buckeye's complaint is that the Court fell into grave and profound errors of fact thereby resulting in an ultimately erroneous decision on the merits of the appeal in contravention to the true position. Buckeye alleges that "Borco Bahamas" and "Borco International" are two separate and distinct companies and that the Court made an obvious error by mixing up the names of those two companies by concluding that Borco Bahamas was changed to Buckeye.

34. Further, Buckeye alleges that the Court erred in fact by misapprehending that Borco International changed its name to Buckeye subsequent to the commencement of litigation which began in 2017. Buckeye also alleges that the Court did not consider an important issue of the doctrine of implied repeal.

35. Succinctly, Buckeye alleges that the Court fell into grave and profound errors. Simply put, we got it wrong. As we see it, Buckeye seeks to reargue the same points in the present application which it argued before this Court in the Judgment. That cannot be permitted and, if permitted, would destroy the fundamental common law principle of finality in litigation.

36. Lastly, what is readily discernable in this appeal is that Buckeye made no attempt to challenge the Judgment to the Privy Council. Buckeye has an alternative remedy to redress its complaint of grave and profound errors of fact by way of an appeal to the Privy Council. The jurisprudence makes it clear that in cases where the appellant has the ability to challenge the decision of the Court of Appeal to a higher court like the Privy Council, the Court is less likely to exercise this implicit jurisdiction.

37. For all of these reasons, the application to reconsider or re-open the appeal must be refused.

38. For purposes of the record of the Court, on the day of the hearing, Buckeye withdrew its stay application. Consequently, we dismiss that application. The parties also agreed that there will be no order as to costs.

The Honourable Madam Justice Charles, JA

The Honourable Mr. Justice Evans, JA

The Honourable Mr. Justice Turner, JA