COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2009/CLE/gen/00814

IN THE MATTER OF Order 17 of the Rules of the Supreme Court 1978

AND IN THE MATTER OF an application by LOCKHART AND MUNROE (as Escrow Agents) for Interpleader Relief against the claims of AERO GENERAL AVIATION LTD. ("AERO") for the recovery of the deposit held in an Escrow Account at Scotia Bank (Bahamas) Limited in respect of the Emerald Bay Asset Sale Agreement dated 3rd February, A. D., 2009

AND IN THE MATTER OF an Escrow Agreement dated 3rd February, A. D., 2009

BETWEEN

LOCKHART AND MUNROE (A firm)

(as Escrow Agents)

Plaintiff

and

1. **MITSUI SUMITOMO INSURANCE (LONDON MANAGEMENT) LIMITED**

2. **EBR HOLDINGS LIMITED (in receivership)**

3. **EBR RESORT HOTEL LIMITED**

4. EBR PROPERTIES LIMITED

5. EMERALD BAY RESIDENCE CLUB LIMITED

6. EBR MARINA LIMITED

7. EMERALD BAY WATER COMPANY LIMITED

8. THE RECEIVERS

(1) Interpleader Plaintiffs

AERO GENERAL AVIATION LTD. ("AERO")

(as assigned to Mountain Lake Development Corporation ("MLDC")

(2) Interpleader Plaintiff

BEFORE: The Honourable Mr Justice Bernard Turner

APPEARANCES: Mr Brian Moree Q.C., Mr Oliver Liddell and Mr Sean Moree for Aero General Aviation Ltd. as assigned to Mountain Lake Development Corporation
Mr Brian Simms Q.C. and Ms Simone Fitzcharles for 1st thru 8th Interpleader Plaintiffs

HEARING DATE: 9 September 2010

RULING
(No. 2)

TURNER J

On the 4 August 2010 I gave a Ruling, in respect of which reasons were to follow in writing, directing that the (1) Interpleader Plaintiffs (the 1st thru 8th Interpleader Plaintiffs herein, collectively referred to as the Vendors) be made the Plaintiff and the (2) Interpleader Plaintiff (AERO/MLDC) (the Purchaser) be made the Defendant in respect of the Interpleader summons filed by the Plaintiff Lockhart and Munroe (a firm) as Escrow Agents May 19, 2009, pursuant to the provisions of Order 17 of the Rules of the Supreme Court. This direction was one of a number of matters addressed during the course of a Case management hearing on the Interpleader summons during which directions were also given as to the filing of affidavit evidence by the parties.

2. On the 23 August 2010 the Court heard Mr Brian Simms Q.C., ex parte in Chambers on a Summons filed the 16 August 2010 in the following terms:

> **"LET ALL PARTIES concerned attend before His Lordship the Honourable Justice Bernard Turner in Chambers in the Supreme Court of The Bahamas, Supreme Court Building, Bank Lane, Nassau, The Bahamas on _____ the _____day of August, A.D. 2010 at _____o'clock in the _____-noon on the hearing of an application on behalf of the 1st through 8th Interpleader Plaintiffs for leave to appeal the case management decision of the Court delivered on 4th August 2010 on the grounds that:**
>
> **(1) the Learned Judge erred at law in directing that the 1st through 8th Interpleader Plaintiffs should be made Plaintiff and the 2nd Interpleader Plaintiff (Aero/MLDC) should be made Defendant;**

(2) **the 1st through 8th Interpleader Plaintiffs have a good prospect of success in appealing the said case management decision."**

.....

3. The Court acceded to this application and granted leave to appeal the decision handed down on 4 August 2010.

4. On the 31 August 2010 the Interpleader Defendants (as assigned by the Court in the said decision of 4 August 2010), hereafter referred to as the Defendants filed a Summons challenging the ex parte Order made by the Court. That Summons reads:

> **"LET ALL PARTIES concerned attend before the Honourable Mr. Justice Bernard Turner, a Justice of the Supreme Court in Chambers at the Supreme Court Building, Bank Lane, Nassau, The Bahamas on Thursday the 2nd day of September, A.D. 2010 at 11:30 o'clock in the fore-noon or so soon thereafter as counsel may be heard on an application by the Defendants for an Order setting aside the ex parte Order made by His Lordship the Honourable Mr. Justice Bernard Turner on the 23rd August, A. D., granting the Plaintiffs leave to appeal the Ruling dated the 4th August, A. D., 2010 on the grounds that:-**
>
> i. **The Court had no jurisdiction to grant leave to appeal on an ex parte application; or alternatively**
> ii. **If the Court had such jurisdiction, in all the circumstances of this case, there was no proper basis for the Plaintiffs to make an ex parte application for leave to appeal or for the Court to**

make an ex parte order granting leave to appeal. Judge erred at law in directing that the 1st through 8th Intepleader Plaintiffs should be made Plaintiff and the 2nd Interpleader Plaintiff (Aero/MLDC) should be made Defendant;"

5. This Summons came on for hearing on the 9 September 2010. In submitting why the Court should set aside its ex parte order granting leave to appeal, the Defendants say in respect of ground (i) above that the substantive jurisdiction for the Court to grant leave to appeal in interlocutory matters is found in section 11 (f) of the Court of Appeal Act, which reads:

"11. No appeal shall lie-

.....

(f) without the leave of the Supreme Court or of the court from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court except-

(i) where the liberty of the subject or the custody of infants is in question;

(ii) where an injunction or the appointment of a receiver is granted or refused;

(iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;

(iv) in the case of an order in a special case stated under the Arbitration Act.

(v) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise; or

(vi) in such other cases to be prescribed as are in the opinion of the authority having power to make rules of court, of the nature of final decisions."

6. They continue that this section therefore requires leave in these circumstances, as the appeal is in respect of an interlocutory matter and does not fall within one of the exceptions and that unless there is specific authority in the Supreme Court Act, which they submit does not exist, or in the Court of Appeal Act or Rules to grant leave on an ex parte basis, the Court would have had no jurisdiction to hear the summons filed on the 16 August 2010 ex parte and therefore should set aside its Order of the 23 August 2010.

7. Rule 27 of the Court of Appeal Rules addresses ex parte applications. The Rule reads:

> **27. (1) Except as otherwise provided by these Rules, every application to a judge of the court shall be by Notice of Motion in Form 6 of Appendix A.**
>
> **(2) Any application to the court for leave to appeal (other than an application made after the expiration of the time for appealing) shall be made ex parte in the first instance.**
>
> **(3) Notwithstanding paragraph (2), if it appears to the court that the other parties should be present, then, the court shall adjourn the application and give directions for the service of notice thereof upon the party or parties affected, and if on the adjourned application leave to appeal is refused the court may make such order as to the costs of any such party as may be just.**
>
> **(4) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the court ex parte within seven days from the date of the refusal.**
>
> **(5) Wherever under the provisions of the Act or of these Rules an application may be made either to the court below or to the court, it shall be made in the first instance to the court below.**

8. The arguments of the Defendants continue that in the absence of specific authority to hear the application ex parte, the Court should always default, as it were, to an inter partes hearing.

9. In respect of their second ground, the central contention is that in the circumstances of this case, even if the Court had jurisdiction to hear the matter ex parte, there was no compelling need to have the matter heard ex parte as there were no issues of secrecy or urgency, indeed the summons had been filed for a week before it was heard ex parte and in those circumstances could easily have been served on the Defendant and made inter partes. They therefore argue that the Order granting leave to appeal should be set aside.

10. In response the Interpleader Plaintiffs, hereafter referred to as the Plaintiffs, advance three central contentions:

1. That on a proper construction of Rule 27 of the Court of Appeal Rules, the Rule allows ex parte applications to be made for leave before a Judge of the Supreme Court.

2. That if the Defendants submissions are correct, then neither the Court of Appeal Rules nor the Supreme Court Rules set out any procedure for any such application. In those circumstances, the (Supreme) Court has inherent jurisdiction to set a convenient form of procedure which would mirror that of the procedure in the Court of Appeal.

3. If the Court finds that no procedure was set by the Court of Appeal Rules and it cannot set down its own procedure, then the only other basis for the application being before the Court is that the Court entertained the application under its Rules for applications made by summons and there is no prohibition against such an application proceeding ex parte. It is contended in this argument that there has developed a practice in the Supreme Court of the Court granting leave to appeal interlocutory decisions on an ex parte basis, on the asserted

principle that it is almost tantamount to an administrative act, the threshold for leave in the circumstances being so low that leave is invariably granted and hardly ever challenged. Therefore, the argument continues, in order to save costs for litigants, the Courts have developed the stated practice. On the issue of the right to be heard, they argue that, just as in this case, if the absent party wishes to be heard in opposition to the leave, they can apply to the Court granting the leave to set it aside; the hearing of which, it is submitted, is essentially a rehearing of the application for leave. Therefore no perceived or actual injustice is done to the litigant and costs are saved in those cases in which there is no opposition to the leave application.

I will look at each of these submissions in turn.

1. Court of Appeal Rules, Rule 27

11. The Plaintiffs make the point that the Supreme Court Act gives no specific authority to the Supreme Court to act in any capacity in relation to appeals from its own jurisdiction. Reference is then made to section 7 of the Supreme Court Act in respect of appellate jurisdiction. Section 7 reads:

7. (1) Subject to this or any other law, the Court shall have-

(a) unlimited original jurisdiction in civil and criminal causes and matters; and

(b) such appellate jurisdiction as may be conferred upon it by this or any other law.

(2) For the proper exercise of the Court's jurisdiction, the Chief Justice may, by order, establish divisions of the Court for the hearing of specific matters.

12. This appellate jurisdiction however can only be a reference to the Court sitting as an appellate court from decisions of inferior courts or other tribunals and not a reference to any right of the Court to grant leave to appeal its decisions, interlocutory or otherwise, to the Court of Appeal. Nowhere else, in the Supreme Court Act or its Rules, is there any reference to the power of the Supreme Court to grant leave to appeal, or any other reference to the procedure for appeals from the Supreme Court to the Court of Appeal.

13. The Plaintiffs continue that while a judge is exercising the right to grant leave to appeal (as per section 11 of the Court of Appeal Act), he is doing so as an exercise of the appellate jurisdiction of the Court of Appeal. Therefore, the submission continues, when one reads Rule 27(2) and it says that an application shall be made to the court for leave to appeal, it means any arm of the court which can hear the application, which, it is submitted, includes the judge at first instance exercising such appellate function, and such application is to be made ex parte in the first instance. Further it is submitted that in construing Rule 27, one should read the Rule in its entirety and not in a vacuum, from the rest of the Rule (or, I would add, from the rest of the Rules of the Court of Appeal). Counsel refers specifically to Rule 27(4) and advances an interpretation of the Rule to say that since the rule speaks about refusal in the court below:

> **"(4) Where an ex parte application has been refused by the court below,..",**

it contemplates an application for leave to appeal ex parte in the Supreme Court.

14. This begs the question whether jurisdiction would be given to a judge of the Supreme Court to hear an application for leave to appeal ex parte in such an oblique fashion, and as to why that power would be placed in the Court of Appeal Rules and not the Rules of the Supreme Court. Counsel also advances an argument that "so above, so below", to wit, as to why would there be a greater right in the Supreme Court, to a respondent to be present at an application for

leave to appeal, than there would be to that same Respondent in the Court of Appeal, where Rule 27(2) clearly states that an application for leave to appeal is made in the first instance to the Court of Appeal ex parte, although the Court also has the jurisdiction to make that application inter partes. As a matter of logic this is an attractive argument and would seem to follow, however as a matter of law this principle, if it is to be used as a method of interpreting legislation, must still attach itself to some legislation to be interpreted. There is no provision in the Supreme Court Act or Rules which can be interpreted to give the Supreme Court a right to grant leave to appeal ex parte. Counsel on that point makes the observation that neither does it exist to give the Court the right to grant leave on an inter partes basis either, an issue to which I will return.

15. On these various points I make several observations.

16. The jurisdiction of the Court of Appeal to hear civil appeals is granted by section 10 of the Act,

> **10. Subject to the provisions of this Part of this Act and to the rules of court, the court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings, and for all purposes of and incidental to the hearing and determination of any such appeal and the amendment, execution and enforcement of any judgment or order made thereon, the court shall, subject as aforesaid, have all the powers authority and jurisdiction of the Supreme Court.**

17. Section 11, far from granting further rights of appeal, in fact limits the rights of appeal in certain circumstances (the marginal note refers to restrictions on civil appeals), in the case of interlocutory decisions, that right is restricted to leave being granted by the Supreme Court or by the Court of Appeal, unless the appeals comes within one of several exceptions.

18. On the point of a judge of the Supreme Court somehow sitting in exercise of the powers of a judge of the Court of Appeal, I would observe:

(1) That whereas the Court of Appeal Act, for the purposes of an appeal give the judges of the Court of Appeal "...**all the powers authority and jurisdiction of the Supreme Court"** it does not purport to do so in the opposite direction and as already indicated, the Supreme Court Act only grants, in respect of appellate jurisdiction, "**such appellate jurisdiction as may be conferred upon it by this or any other law."** And,

(2) Under the Constitution, the only judge of the Supreme Court who can sit as a judge of the Court of Appeal is the Chief Justice. Article 98 reads:

> **98. (1) There shall be a Court of Appeal for The Bahamas which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.**
>
> **(2) The Justices of Appeal of the Court of Appeal shall be-**
>
> **(a) a President;**
>
> **(b) the Chief Justice by virtue of his office as head of the Judiciary but who, however, shall not sit in the Court of Appeal, unless he has been invited so to sit by the President of the Court; and**
>
> **(c) such number of other Justices of Appeal as may be prescribed by Parliament.**
>
> **(3) No office of Justice of Appeal shall be abolished while there is a substantive holder thereof.**
>
> **(4) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court**

19. It would be surprising if the Court of Appeal Act, and even more so its Rules, were to confer upon a judge of the Supreme Court, any of the duties or functions of a judge of the Court of Appeal without a clear statement to that effect, or somehow constitutionally permit a judge of the Supreme Court, without invitation (which can only be extended to the Chief Justice, by the President) to sit as a judge of the Court of Appeal.

20. A reference to the court, in the Court of Appeal Act, means the Court of Appeal (see section 2). So too in the Rules. Rule 2 states that:

> **"2. In these Rules –**
>
> **An Act means the Court of Appeal Act;**
>
> **An appellant means the party appealing from a judgment, conviction, sentence or order and includes his legal representative**
>
> **A court means the Court of Appeal;**
>
> **A court below means the court from which the appeal is brought;**
>
> **A file means file in the Registry of the Court of Appeal, and**
>
> **A filed and A filing have corresponding meanings;**
>
> **A judge includes the presiding officer of any court from which an appeal lies to the court;"**

21. These sections and rules provide the statutory framework within which Rule 27 must be interpreted. Guided by the interpretation section in the Court of Appeal Rules, it is impossible to interpret Rule 27 as saying anything other than the following (words in bold italics added to the text):

> 27. (1) Except as otherwise provided by these Rules, every application to a judge of the court ***of Appeal*** shall be by Notice of Motion in Form 6 of Appendix A.
>
> (2) Any application to the court ***of Appeal*** for leave to appeal (other than an application made after the expiration of the time for appealing) shall be made ex parte in the first instance.
>
> (3) Notwithstanding paragraph (2), if it appears to the court ***of Appeal*** that the other parties should be present, then, the court ***of Appeal*** shall adjourn the application and give directions for the service of notice thereof upon the party or parties affected, and if on the adjourned application leave to appeal is refused the court ***of***

Appeal may make such order as to the costs of any such party as may be just.

(4) Where an ex parte application has been refused by the ***Supreme*** court below, an application for a similar purpose may be made to the court ***of Appeal*** ex parte within seven days from the date of the refusal.

(5) Wherever under the provisions of the Act or of these Rules an application may be made either to the ***Supreme*** court below or to the court ***of Appeal***, it shall be made in the first instance to the ***Supreme*** court below.

22. Despite the detailed arguments of counsel for the Plaintiffs, no other reading of the relevant section seems possible.

23. Counsel for the Plaintiffs cited the decision of the Court of Appeal of Tanzania in the matter of **Paul Kweka and Hillary Kweka v Ngorika Bus Services and Transport Co. Ltd. No. 129 of 2002** in support of the contention that the Supreme Court can hear an application for leave to appeal to the Court of Appeal ex parte. Counsel submits that section 5 of the Appellate Jurisdiction Act, 1979 of Tanzania (the Long Title of which reads, An Act to provide for Appeals to the Court of Appeal of the United Republic of Tanzania) is similar in terms to section 11 of the Court of Appeal Act of The Bahamas. Section 5(1)(c) of the Act, as found in the decision of the Court of Appeal of Tanzania (since the copy of the legislation submitted to the Court has this section as section 4(1)(c)) reads:

"5 (1) In civil proceedings, except where any written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-

(a) .....

(b).....

(c) with the leave of the High Court or of the Court of Appeal against every other decree, order, judgment, decision or finding of the High Court."

24. The decision at page 3 reads:

"The appellants were dissatisfied with the said ruling and order of the High Court and desired to appeal against it. To execute their desire to appeal the appellants duly filed, Miscellaneous Civil\Application No. 52 of 2002 in the High Court at Moshi. They were applying for leave to appeal in terms of section 5 (1) (c) of the Appellate Jurisdiction Act, 1979. The application was heard ex parte and leave to appeal was granted by the High Court. The applicants were dissatisfied hence this appeal before us.

The memorandum of appeal filed by Ms. Shayo, Jonathan and Company, Advocates contains six (6) grounds of appeal. When this appeal was called on for hearing Mr. Jonathan decided to argue the appeal on the following two grounds of complaint..."

25. It is apparent from a reading of the decision that no issue was raised or taken in respect of the grant of the ex parte leave to appeal and therefore the decision does little more than record the fact of the ex parte application. It is of course possible that this is because of other provisions of the law of the United Republic of Tanzania, or because the accepted, unchallenged practice in that jurisdiction is that it is done in that fashion, but the decision can hardly be said to provide any ratio decidendi in support of a contention that leave to appeal an interlocutory decision can be granted ex parte. I do however accept that on its face, it indicates that leave to appeal was granted ex parte and that this was not

challenged in the Court of Appeal by counsel, or at the instance of the Court, which did raise other issues not addressed by either counsel.

26. I therefore find that Rule 27 of the Court of Appeal Rules does not grant to a judge of the Supreme Court any of the jurisdiction of a judge of the Court of Appeal, nor does it grant to a judge of the Supreme Court the right to hear an application for leave to appeal to the Court of Appeal ex parte.

2. No Rules of Procedure in relation to the Application for leave to appeal

27. The Plaintiffs submit that if the Court finds that there is no process for an application for leave to appeal, then the Court has the right to mould a convenient form of procedure and that procedure could and should mirror the procedure as found in Rule 27 of the Court of Appeal Rules in respect of leave applications before the Court of Appeal, which are ex parte in the first instance. They cite **Smith v Williams (1922) 2 KB 158** in support of this proposition. In **Smith** the facts required that some procedure be adopted to allow the appeal of the surveyor against the Respondent's earlier successful appeal against his income tax assessment to go forward after the death of the Respondent, upon the finding by the Court that the matter had not abated upon the death of the Respondent. In those circumstances, the Divisional Court held that it was permissible for them to mould some procedure (the procedure being to allow the Respondent's executor to be added as Respondent) to allow the matter to go forward. I accept the principle established in this case, although I would observe that the particular circumstances of that case are addressed by Order 15 Rule 8(2) of the Rules of the Supreme Court of The Bahamas.

28. In the instant case, it is asserted that as the Rules of the Supreme Court do not specifically address the procedure for grant of leave in these circumstances, the absence of a stipulated procedure in the Supreme Court

would prevent the matter from going forward since the concatenation of section 11 (f) of the Court of Appeal Act, which prohibits the appeal unless leave is granted in the Supreme Court or the Court of Appeal, and Rule 27 (5) of the Court of Appeal Rules, which provides that where the Rules or the Act allow an application in the court below or the court (of appeal), then the application is to be made in the court below first, results in the matter having to be heard in the Supreme Court before there can be an ex parte hearing in the Court of Appeal. Therefore, on the authority of **Smith v Williams,** some procedure is required in the Supreme Court.

29. As previously indicated, the argument advanced seems logical, "as above, so below", however on this point counsel for the Defendants submit that if there is to be any moulding of a procedure, the procedure which should be moulded would be one which requires an inter partes hearing, for the reasons previously indicated. The Defendants cite in support of this contention the decision of **Lewison J in Hill and Another v Van Der Merwe and Others (2007) EWHC 1613** where it was indicated:

> **"As a general rule of course, as Hoffmann J pointed out in *Re First Express Limited* [1991] BCC 782, an order should not be made against a person without first hearing what he has to say. The exception is when two conditions are satisfied: they are, first, that by giving them such an opportunity appears likely to cause injustice to the applicant by reason either of the delay involved or the acts involved or the action which it appears likely that the respondent or others will take before the order can be made; the second is when the court is satisfied that any damage which the respondent may suffer through having to comply with the order is compensatable under a cross-undertaking in damages, or that the risk of uncompensatable loss is clearly outweighed by the risk of injustice to the applicant if the order is not made."**

30. As a general principle that must of course be accepted (audi alteram partem), the issue here is whether, in circumstances where it can be done in the Court of Appeal, it can be done, for that reason, in the Supreme Court.

31. On this issue I must disagree with counsel for the Plaintiffs, no matter how sensible the practice may appear to be, the court should never default, in the absence of clear statutory provision to an ex parte process which allows one party to approach the court outside of the parameters of a need for secrecy or in circumstances of great urgency to obtain leave, even if the other side can later seek to set it aside. Undoubtedly that procedure exists in the Rules of the Court of Appeal, for the Court of Appeal. I find that no such clearly defined procedure exists in the Supreme Court and that the appropriate "default procedure" in the Supreme Court, to give efficacy to section 11 (f) of the Court of Appeal Act, is an inter partes application for leave to appeal interlocutory decisions.

3. Existing Supreme Court Rules

32. The final argument advanced by counsel for the Plaintiffs is that if the Court disagrees with the first two submissions, then the Court could find authority for the application made before it and the decision which in reached by reference to the existing procedure in relation to applications brought by summons, which is, it is asserted, that the court has a discretion to hear them ex parte or inter partes.

33. Order 32, the Rules of the Supreme Court, states:

> **"1. Except as provided by Order 25, rule 7, every application in chambers not made *ex parte* must be made by summons.**
>
> **2. (1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by the Registrar.**
>
> **(2) A summons may not be amended after issue without leave of the Court.**
>
> **3. A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every**

other party not less than two clear days before the day so specified"

34. Having regard to the provisions of this Order, I am unable to agree with the proposition as advanced by the Plaintiffs. It seems that every summons must be served on the other side, besides those matters brought ex parte. Far from giving the Court the discretion to hear a summons ex parte, it seems to require service. The reference to the Court otherwise ordering I interpret to be a reference only to abridgement of the time between service and hearing

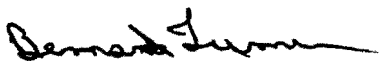
35. I Indeed the Rules of the Supreme Court indicate an exhaustive list of those circumstances in which applications can be made ex parte, some thirty-one (31) such instances found in Orders 10, 15, 16, 20, 29, 30, 32, 39, 46, 48, 49, 50, 52, 53, 54, 60, 65, 67, 68, 69, 78, 79 and 81. Nowhere in any of those instances is there any reference to an ex parte application for leave to appeal. In the absence of a specific ex parte provision in the Rules, I find that there is no authority for the Court to decide to hear a summons ex parte.

Disposal of this application

36. For the reasons as indicated above, I find that the court acted in the absence of jurisdiction when it granted leave to appeal, on the 23 August 2010, to the Plaintiffs on their ex parte application.

37. I therefore set aside my grant of leave to appeal.

Dated this 27 day of October, A.D. 2010



Bernard S A Turner
Justice