

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHCM 2013/00160

BETWEEN:

By way of Claim:

[1] RENOVA INDUSTRIES LIMITED
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED
[4] LAMESA HOLDING SA

Claimants

and

[1] EMMERSON INTERNATIONAL CORPORATION
[2] ~~TOMSA HOLDINGS LIMITED~~
[3] ~~ALABASTER ASSOCIATES LIMITED~~
[4] ~~GARDENDALE INVESTMENTS LIMITED~~
[5] MIKHAIL ABYZOV
[6] ROMOS LIMITED
[7] FRESKO FINANCIAL LIMITED

Defendants

And by way of Counterclaim:

[1] EMMERSON INTERNATIONAL CORPORATION
[2] ~~TOMSA HOLDINGS LIMITED~~
[3] ~~ALABASTER ASSOCIATES LIMITED~~
[4] ~~GARDENDALE INVESTMENTS LIMITED~~
[5] ANDREY TITARENKO

Claimants by way of Counterclaim

and

[1] RENOVA INDUSTRIES LTD
[2] WEDGWOOD MANAGEMENT LIMITED
[3] ZAPANCO LIMITED
[4] LAMESA HOLDING SA
[5] VIKTOR VEKSELBERG
[6] INTEGRATED ENERGY SYSTEMS LIMITED
(a company incorporated under the laws of Belize)
[7] ODVIN FINANCIAL INC
[8] GOTHELIA MANAGEMENT LIMITED
[9] RENOVA HOLDING LIMITED
[10] VLADIMIR KUZNETSOV

[11] ALEXEI MOSKOV
 [12] ALEXANDER KOLYCHEV
 [13] MIKHAIL SLOBODIN
 [14] MAKSIM MAYORETS
 [15] RENOVA MANAGEMENT AG
 [16] PAO T PLUS
 [17] INTEGRATED ENERGY SYSTEMS LIMITED
 (a company incorporated under the laws of Cyprus)
 [18] CLERN HOLDINGS LIMITED
 [19] STARLEX COMPANY LIMITED
 [20] SUNGLET INTERNATIONAL INC
 [21] OOO RENOVA-HOLDING RUS

Defendants by way of Counterclaim

And by way of Ancillary Claim:

[1] MIKHAIL ABYZOV
 [2] ROMOS LIMITED
 [3] FRESKO FINANCIAL LIMITED
 [4] ANDREY TITARENKO
 [5] GOLDFORT LIMITED
 [6] EMMERSON INTERNATIONAL CORPORATION

Claimants by way of
Ancillary Claim

and

[1] RENOVA INDUSTRIES LTD
 [2] WEDGWOOD MANAGEMENT LIMITED
 [3] ZAPANCO LIMITED
 [4] LAMESA HOLDING SA
 [5] VIKTOR VEKSELBERG
 [6] INTEGRATED ENERGY SYSTEMS LIMITED
 (a company incorporated under the laws of Belize)
 [7] ODVIN FINANCIAL INC
 [8] FLOPSY OVERSEAS LIMITED
 [9] VLADIMIR KUZNETSOV
 [10] ALEXEI MOSKOV
 [11] ALEXANDER KOLYCHEV
 [12] MIKHAIL SLOBODIN
 [13] RENOVA MANAGEMENT AG
 [14] RENOVA HOLDING LIMITED
 [15] PAO T PLUS
 [16] INTEGRATED ENERGY SYSTEMS LIMITED
 (a company incorporated under the laws of Cyprus)
 [17] CLERN HOLDINGS LIMITED
 [18] MAKSIM MAYORETS
 [19] LIWET HOLDING AG
 [20] BERDWICK HOLDING LIMITED
 [21] TIWEL HOLDING AG
 [22] A.B.C. GRANDESERVUS LIMITED

Defendants by way of Ancillary Claim

And by way of Third Ancillary Claim:

[1] EMMERSON INTERNATIONAL CORPORATION
Claimant by way of Third Ancillary Claim
and

[1] VIKTOR VEKSELBERG
[2] INTEGRATED ENERGY SYSTEMS LIMITED
[3] VLADIMIR KUZNETSOV
[4] EVGENY OLKHOVIK
[5] ANDREY BURENIN
[6] YAKOV TESIS
[7] ALEXEI MOSKOV
[8] IGOR CHEREMIKIN
[9] IRINA MATVEEVA
[10] PAVLINA TSIRIDES
[11] IRINA LOUTCHINA SKITTIDES
[12] PHOTINI PANAYIOTOU
[13] ARTEMIS ARISTEIDOU
[14] A.B.C. GRANDESERVUS LIMITED
[15] STARLEX COMPANY LIMITED
[16] RENOVA INDUSTRIES LIMITED
[17] SUNGLET INTERNATIONAL INC.

Defendants by way of Third Ancillary Claim

Appearances:

Mr. David Quest, QC and with him Miss Arabella di Iorio and Mr. Andrew McLeod for the 'Renova Parties' as defined in paragraph [5] below;
Mr. Andrey Titarenko in person.

2021: November 15;
2022: March 28.

JUDGMENT

[1] **WALLBANK, J. (Ag.):** This is the Court's Judgment in respect of an application filed on 6th July 2021 by Mr. Titarenko, in which he seeks orders striking out eight applications as being an (alleged) abuse of process of the Court, with costs.

Introduction

[2] Mr. Titarenko relies upon rules 26.1(2)(w) and 64.9 of the Civil Procedure Rules, 2000 ('CPR').

[3] CPR 26.1(2)(w) provides:

“Except where these rules provide otherwise, the court may –
(w) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective.”

[4] CPR 64.9 provides for the Court’s powers in relation to wasted costs.

[5] The eight applications had been filed between 5th September 2018 and 2nd July 2021 by various combinations of the claimants/defendants to the counterclaim/defendants to the ancillary claims (‘Renova Parties’). These were the following:

- (1) Renova Industries Limited
- (2) Wedgwood Management Limited
- (3) Zapanco Limited
- (4) Lamesa Holding SA
- (5) Viktor Vekselberg
- (6) IES Belize
- (7) Odvin Financial Inc
- (8) Flopsy Overseas Limited
- (9) Starlex Company Limited
- (10) Sunglet International Inc
- (11) IES Cyprus
- (12) OOO Renova-Holding Rus
- (13) PAO T Plus

[6] These were named as Respondents to the Application. Mr. Titarenko also named as Respondents, or purported to do so, the following, as purported 14th to 20th Respondents:

- (1) Mr. Jeremy Andrews
- (2) DLA Piper UK LLP
- (3) Agon Litigation
- (4) Agon (BVI) Limited

- (5) Miss Arabella di Iorio
- (6) Mr. Michael Fay, QC
- (7) Mr. Shane Quinn.

[7] A common feature of the eight applications was that they were supported by witness statements of one Mr. Jeremy Andrews, an English solicitor with the law firm DLA Piper UK LLP. The Renova Parties are opponents of Mr. Titarenko in these proceedings.

[8] The eight applications comprise, in summary, of the following:

- (1) Two applications for an extension of time to file defences. Mr. Titarenko refers to these as 'the Extension Applications';
- (2) An application for relief from sanctions (the 'Relief from Sanctions Application');
- (3) An application whereby the Renova Parties sought an order that Mr. Titarenko and companies associated with him should be represented by the same legal practitioners as Emmerson International Corporation and parties related to it (the 'Combined Representation Application');
- (4) Three applications brought by PAO T Plus;
- (5) An application brought by OOO Renova Holding Rus ('RHR').

Grounds of Mr. Titarenko's Application

[9] The grounds on which Mr. Titarenko relies were set out in his Notice of Application. He called these eight applications 'the Defective Applications' and Mr. Andrews' Witness Statements 'the Defective Statements'. The principal grounds were stated as follows:

"B1. Pursuant to CPR 11.7 a properly constituted interlocutory application must state (a) the grounds and (b) the relief sought. Accordingly, court documents setting out the grounds and the relief sought comprise the application. A natural or legal person who/which sets out the relief sought[t] or grounds of an application in a document or orally is a maker of the application.

B2. The grounds of the Defective Applications are set out in the Defective Statements made by Mr Andrews. Accordingly, Mr Andrews is the main maker of each of the Defective Applications.

...

B3. The relief sought in the Defective Applications is set out in the respective application notices. It is ambiguous whether the application notices are signed on behalf of a purported law firm known as "Agon Litigation" and formerly known as "Advocates BVI" ("Agon") (acting on behalf of their lay clients) or alternatively

application notes [sic] for the Defective Applications are signed by Agon's employees acting as individual legal practitioners on behalf of their lay clients, and accordingly other employees/partners of Agon (or Agon itself if it is a legal person) are not involved. The Applicant's [sic] advances as primary case the first alternative.

...

B4. Agon does not set out the grounds of the Defective Applications but summarises them as a language exercise. If a wrong or misleading statement is made within the grounds, Agon should not be held responsible for consequences of making such statement.

...

B5. In addition, one of the two main reliefs sought by way of the Representation Injunction Application is set out by Mr Andrews in §39 of Andrews 18:

"the Applicants [i.e. those Vekselberg Parties which are applicants of Application #4] seek an order for all such case management directions as are necessary to prevent the Applicants suffering any prejudice as a result of the Respondents being separately represented".

B6. The name of Mr Andrews is not and was not entered on the Roll, Mr Andrews was not a legal practitioner in the Territory of the Virgin Islands ("the TVI") at the time of making of each of the Defective Applications.

B7. Making by a legal or natural person who is not a legal practitioner in the BVI of an interlocutory application for filing in the High Court constitutes illegality for contravention of sections 18(1) or (2) of the Legal Profession Act, 2015 ("the LPA"), irrespective of whether the interlocutory application has been physically made or signed within or outside the TVI.

B8. The 15th Respondent ("DLA Piper") represents the 1st to 13th Respondents in these proceedings. Mr Andrews is an employee of DLA Piper. Making by Mr Andrews of the Defective Applications constitutes legal services rendered to the 1st to 13th Respondents by DLA Piper. The 1st to 13th Respondents pay fees for legal services to DLA Piper rather than to Mr Andrews.

...

B9. Representing a party in proceedings in the High Court in the TVI by a legal or natural person who is not a legal practitioner in the TVI constitutes an offence pursuant to sections 18(1) or (2) of the LPA, irrespective of whether that person physically operates inside or outside of the TVI.

B10. DLA Piper is a legal person incorporated as a limited liability partnership in the UK. The name of the DLA Piper is not in the Roll, DLA Piper is not a legal practitioner in the TVI.

B11. A practice of representation of parties in proceedings in the Commercial Division of the High Court in the TVI by way of cooperation of an "onshore" and "offshore" law firms, as particularised below ("the Foreign Representation Practice"), is common.

...

B12. A party to an action in the High Court in the TVI is often legally represented by a purported "offshore" law firm which is actually not an unincorporated partnership, but a TVI company or a legal person in the form of an incorporated limited liability partnership in the TVI; 'partners' and 'associates' of such firm are actually employees at the respective company or incorporated LLP ("the Corporate Representation Practice", together with the Foreign Representation Practice, "the Representation Practices").

14. Agon appears to follow the Corporate Representation Practice. ...

16. Following any of the Foreign Representation Practices or the Corporate Practices: on the part of the 'onshore' firm –

(i) is illegal as constituting an offence pursuant to sections 18(1) and/or (2) of the LPA, and,

in respect of representation of bodies corporate in commercial matters,

(ii) constitutes an unjustified breach of CPR 69B.4(4) ("bodies corporate must be represented by a legal practitioner in all commercial matters");

and, on the part of the 'offshore' firm,

(iii) constitutes professional misconduct of the involved individual legal practitioners for abetting and assisting the 'onshore' firm in illegal activity and breach of the CPR by the client.

...

B13. The legal system in the TVI is seriously corrupted by the Representation Practices. The Honourable Mr Justice Gerhard Wallbank ("The Learned Judge") appears to wilfully encourage parties to illegal and improper acting in commercial matters by retaining 'onshore' lawyers in cooperation with 'offshore' lawyers, as well as retaining TVI companies which act through individual legal practitioners.

...

B14. The Respondents advance a case that the Applicant in his capacity as a director of Romos Limited and Goldfort Limited ("R&G") may not represent R&G in breach of CPR 69B.4(4). Moreover, they contend that documents signed by the Applicant on behalf of R&G for the purpose of these proceedings are nullities, and letters signed by the Applicant for R&G and addressed to other parties in these proceedings should be disregarded ("the Agon Nullity Case"). The Agon Nullity Case is also supported by Emmerson International Corp., Mr Abyzov and Fresko Financial Limited ("the EAF Parties"). At the hearing on 14 June 2021 the Learned Judge expressed his view that representation of a company by a person who is not a legal practitioner is impermissible in commercial matters unless the Learned Judge would be shown compelling reasons to the contrary.

...

Main Grounds

Ground 1. The Defective Statements (as documents produced for the purpose of setting out grounds of the Defective Applications) are:

- (i) made illegally by Mr Andrews, in contravention of sections 18(1) and (2) of the LPA;
- (ii) made as a result of improper legal representation of the Vekselberg Parties by DLA Piper, constituting an offence pursuant to sections 18(1) and (2) of the LPA;
- (iii) made in breach of CPR 69B.4(4), and/or
- (iv) nullities, in the event the Court finds contrary to the Applicant's primary case, that the Agon Nullity Case is correct.

For the avoidance of doubt, in stating this ground and for the purpose of this Application, the Applicant does not treat the Defective Statements as evidence and does not contend that evidence cannot be produced by a foreign lawyer.

Ground 2. Accordingly, the Defective Statements (as documents produced for the purpose of setting out grounds of the Defective Applications) should be struck out:

- (i) either as made in abuse of the process of the Court, or alternatively (albeit contrary to the Applicant's primary case)
- (ii) as nullities.

Ground 3. Further and consequentially, the Defective Applications should be struck out:

- (iii) as not properly constituted, for having grounds stated in the Defective Statements which are nullities or should be struck out in any event;
- (iv) as not properly constituted, for having relief stated by Agon which is not a legal practitioner as determined by the Disciplinary Tribunal;
- and/or
- (v) for abuse of process, as made as a result of unlawful cooperation between DLA Piper, Mr Andrews and Agon and related unprofessional conduct of Agon's employees.

Ground 4. Further and alternatively, the Relief from Sanctions Application should be struck out as not properly constituted, for being not supported by evidence on affidavit contrary to EC CPR 26.8(1)(b).

Ground 5. The Applicant seeks to strike out the Extension Applications notwithstanding decisions made in draft by The Learned Judge that the Main Vekselberg Parties be granted extension sought in the Extension Applications. The Applicant relies on the pattern of conduct exercised on behalf of Mr Moskov as detailed below ("the Moskov Pattern") ...

Ground 6. Costs related to this Application and the Defective Applications should be paid on a wasted costs basis by the legal practitioners and purported legal practitioners for their improper and unreasonable conduct and holding them responsible for the illegal activity and abuses of the process of the Court set out above.

Ground 7. In accordance with [139] of the Learned Judge's Judgment made in May 2021 in relation to Mr Moskov's extension application, "the Legal Practitioner(s) and their employer(s) potentially concerned" should be given an opportunity to defend themselves in respect of allegations of breach of the Code of Ethics or other impropriety. Accordingly, the 14th to 20th Respondents have been joined to this Application."

- [10] Mr. Titarenko filed a Witness Statement (his 18th in these proceedings) in support of his application. This document did not, though, contain any evidence in support of his application, as the general rule in CPR 11.9(1) (as modified for the Commercial Court) requires. It substantively did no more than to state:

"I certify that the matters of fact stated in the Strike Out Application are true."

- [11] The application came on for hearing on 15th November 2021. At the hearing, only the Renova Parties appeared. The other purported Respondents to the application (none of whom are parties to the proceedings) did not appear.

The Renova Parties' submissions

- [12] The Renova Parties submitted as follows in their skeleton arguments. The footnotes in this part of the judgment are those that were included in the skeleton arguments:

"Introduction

1. This is an application by Mr Titarenko:
 - a. to strike out eight applications by the Renova Parties, and/or the witness statements given in support of them, as an abuse of process; and
 - b. for an order that six non-parties to the proceedings, viz Jeremy Andrews, DLA Piper UK LLP, Agon Litigation, Arabella di Iorio, Michael Fay QC and Shane Quinn, should pay the costs of those applications and the present one.
2. This skeleton argument is filed only on behalf of the Renova Parties and only in relation to the application to strike out.
3. Mr Titarenko's strike-out application has been listed, in accordance with his own time estimate, for **two hours**. The application can and must be heard within that time: it cannot be allowed to go part heard as so many previous applications have in these proceedings. To that end, the Court is asked to set and enforce a strict timetable. It is proposed that Mr Titarenko should have **40 minutes** to open his application, the Renova Parties **50 minutes** to respond, and Mr Titarenko **10 minutes** to reply. That will leave **20**

minutes for the Court to give judgment, if appropriate. Since the Court should only contemplate striking out the disputed applications and witness statements if they are clearly abusive, those times should be more than sufficient.

Striking out wrong in principle

4. In dismissing an earlier strike-out application by Mr Titarenko (in respect of one of the same applications to which the present strike out application is directed), the Court explained the proper approach as follows: *“Now, I accept that the Court can, as part of its case management powers, strike out an interlocutory application. **That though, must be an exceptional approach, to be used only in clear cases.** The ordinary course is to permit an application to proceed to its substantive hearing.”*¹
5. Adopting that approach, the Renova Parties’ primary contention is that the present strike-out application is wrong in principle.
6. Two of the disputed applications, the Extension Applications, have already been heard and decided, and an order has been made and sealed. The Court has no jurisdiction now to reopen the applications on any grounds, and particularly not on grounds that were not raised by Mr Titarenko at the time.²
7. The Relief from Sanctions Application became moot as a result of the grant of the Extension Applications, was accordingly not pursued by the Renova Parties and, in any event, the Court stated that there was no need for it to be determined. In the present circumstances, there would be no purpose in the Court considering whether that application should be struck out.
8. The Combined Representation Application, issued in March 2020, and the application by T Plus to set aside joinder, issued in October 2019, are both part-heard, with the Court having already heard extensive argument on the substance of the applications. It is procedurally improper for Mr Titarenko to seek to interrupt the orderly completion of the hearings of those applications by a subsequent and separate satellite application to strike them out on grounds not previously raised.
9. The remaining three disputed applications by T Plus and RHR are yet to be heard and await a listing date. Mr Titarenko has not explained why he cannot pursue his objections at the hearing of the applications themselves in the ordinary course.

Principal propositions

10. Insofar as it is possible to discern them, Mr Titarenko’s application appears to advance the following principal propositions:

¹ See the transcript of the hearing on 21 September 2020 of Mr Titarenko’s strike out application dated 13 May 2020 [Auths/3] (emphasis added).

² As the Court has already found (in its *ex tempore* ruling of 3 August 2021 in the context of an application by Mr Titarenko against Mr Moskov), there is no equivalent in the Eastern Caribbean CPR to English CPR 3.1(7) and in the absence of that rule, the Court only has power to amend or vary an order under the slip rule. Absent a slip, the aggrieved party’s only course is to appeal.

- a. That the natural or legal person who/which sets out the relief sought or the grounds of an application in a document is a maker of the application;
 - b. That accordingly Mr Andrews is the maker of the 8 applications referred to (with certain alleged consequences);
 - c. That Mr Andrews is committing an offence under section 18 of the LPA as he is not a legal practitioner for the purposes of the LPA, but is nevertheless representing the Renova Parties in the BVI proceedings;
 - d. That DLA Piper and Agon Litigation are engaged in something which he calls "Foreign Representation Practice";
 - e. That Agon Litigation is engaged in something which he calls "Corporate Representation Practice";
 - f. That the Renova Parties' and IES Cyprus' application for relief from sanctions should be struck out as not being supported by evidence on oath;
 - g. That the Renova Parties' and IES Cyprus' applications for an extension of time to file the defences to the Schedule 4 Claims should be struck out because of alleged conduct by Mr Moskov.
11. These propositions are addressed below by reference to Mr Titarenko's "main grounds" at pp 15-17 of his Application Notice, and those at B1-B14 at pp 6-15 thereof (which overlap with the main grounds to some extent).

"Main grounds" for the strike-out

12. Mr Titarenko advances five "*main grounds*" for the strike out; see pp 15-17 of the Application Notice. None has any merit.
13. **Ground 1** and **ground 2** concern the disputed witness statements, each of which was made by Mr Jeremy Andrews, an English solicitor and partner in the firm DLA Piper UK LLP.
14. Mr Titarenko argues that Mr Andrews' statements should be struck out (or are a nullity) because Mr Andrews, or his firm, has acted in breach of sections 18(1) and (2) of the Legal Practitioners Act by practising law or acting as a legal practitioner in the BVI while not on the Roll.
15. There is no objection in principle to a party relying on a witness statement made by a foreign lawyer. As the Court has previously said: "*...there is no rule stopping a foreign lawyer giving evidence on behalf of his client. It has been a practice for decades, and so common as to be almost universal, for evidence to be given in complex commercial matters by a solicitor or equivalent on behalf of the underlying client.*"³ All of the parties to the present proceedings, including Mr Titarenko, have adopted that practice.

³ *Emmerson International Corporation & Ors v Renova Industries Limited & Ors* BVIHC(COM) 2013/1060; delivered 15 April 2021 per Wallbank J [Volume B/9].

16. Mr Titarenko's only discernible complaint about the contents of the statements is that Mr Andrews sets out in them the grounds for the corresponding applications. Mr Titarenko argues that Mr Andrews should thereby be treated as having made the applications himself and, therefore, as illegally practising law or acting as a legal practitioner in the BVI.
17. This argument is obviously wrong. The applications were made by the Renova Parties, not by Mr Andrews: it is they who seek the relief. The application notices were required to be signed by a legal practitioner, pursuant to Practice Directions 1 of 2007 and 1 of 2008, but they were so signed, by Miss di Iorio, Mr Fay QC or Mr Quinn, each of whom is on the Roll. Mr Andrews's involvement in the applications was only as a witness, giving evidence pursuant to CPR 11.9 in support of the applications.
18. In any case, even if Mr Andrews or DLA Piper UK LLP were in breach of the Legal Practitioners Act, that would not justify striking out the statements. The Court rejected a similar argument in its judgment on the Extension Applications: *"[The] argument that Mr Andrews was illegally practicing BVI law by making submissions to the Court in his evidence does not assist Mr. Titarenko. The Court was not taken to any authority that the Court ought to enforce the prohibitions contained in the Legal Profession Act, against unadmitted overseas lawyers practising BVI law, by refusing to admit their evidence. The Legal Profession Act provides an express remedy for such breach by way of a prohibition against recovery of costs by such unadmitted foreign lawyers. That is a provision precisely and carefully targeted at overseas lawyers, not at their clients. Indeed, a refusal to admit such evidence would be liable to prejudice the underlying litigant, which would be contrary to the Overriding Objective of dealing with cases justly."*⁴
19. Mr Titarenko also argues that the statements were made in breach of CPR 69B.4(4), which provides that bodies corporate must be represented by a legal practitioner in all commercial matters. There was no breach, however: the Renova Parties were represented by legal practitioners, viz. Miss di Iorio, Mr Fay QC and Mr Quinn at Agon Litigation.
20. In **ground 3**, Mr Titarenko argues that the disputed applications should be struck out:
 - a. *"as not properly constituted, for having grounds stated in the Defective Statements which are nullities or should be struck out in any event"*
 - b. *"as not properly constituted, for having relief stated by Agon which is not a legal practitioner as determined by the Disciplinary Tribunal; and/or"*
 - c. *"for abuse of process, as made as a result of unlawful cooperation between DLA Piper, Mr Andrews and Agon and related unprofessional conduct of Agon's employees."*
21. As to (a), CPR 11.7 provides that an application *"must state (a) briefly, the grounds on which the applicant is seeking the order; and (b) what order the applicant is seeking"*. All

⁴ *ibid.* [Volume B/9].

the disputed applications comply with that rule. It is irrelevant that the grounds may also be set out in more detail in the witness statements.

22. As to (b), this appears to be a reference to the fact that the name of Agon Litigation appears on the applications under Miss di Iorio's signature. There is nothing objectionable or remarkable about that: it is required by the Practice Directions.
23. In any case, even if there were some error in procedure or failure to comply with a rule in connection with the applications, that would not in itself invalidate them; see CPR 26.9. The right course would be for the Court to direct the Renova Parties to correct any error or non-compliance.
24. As to (c), there is simply no evidence of any "*unlawful cooperation*" or "*unprofessional conduct*" on the part of DLA Piper, Mr Andrews or Agon. And, as set out in para 11 above, that would anyway not justify striking out the applications.
25. **Ground 4** relates only to the Relief from Sanctions Application. Mr Titarenko argues that that application should be struck out because the evidence in support was given by witness statement rather than affidavit. However, that was permissible at the time under the relevant Emergency Measures Practice Direction No.1 of 2020, which was brought in to deal with the Covid-19 pandemic. In any case, for the reasons given above at paragraph 7, there would be no purpose as matters presently stand in the Court considering whether the application should be struck out.
26. **Ground 5** relates only to the Extension Applications. Mr Titarenko argues that they should be struck out because of "*a pattern of conduct exercised by Mr Moskov*". The Renova Parties do not understand that ground. Mr Moskov is not party to the Extension Applications and had no involvement in them.

Grounds B1 – B14

27. Mr Titarenko also sets out a number of grounds at pp 6-15 of his Application Notice, many of which overlap with his "main grounds". These are briefly addressed below.

The maker of an application (grounds B1 and B2 at p 6 of Mr Titarenko's Application Notice)

28. Relying on CPR 11.7 Mr Titarenko contends that since a properly constituted application must state (a) the grounds and (b) the relief sought, it follows that a natural or legal person who or which sets out the grounds or the relief sought in a court document is a maker of the application. And since Mr Andrews has provided the evidence in support, which sets out the grounds of the application, Mr Andrews is "a" or "the" main maker of the 8 allegedly defective applications.
29. This argument is a fallacy from start to finish. CPR 11.7 deals with what must be included in a notice of application: "*An application must state (a) briefly, the grounds on which the **applicant** is seeking the order; and (b) what order the **applicant** is seeking.*" (emphasis added). The maker of the application is plainly the party applying to the court for relief, here one or more of the Renova Parties. The rules go on to provide (CPR

11.9) for the application to be supported by evidence. That evidence, whoever gives it, *supports* the application. It does not somehow change the identity of the applicant.

30. Should any further support for this proposition be required, it can be found in CPR 3.6(3) which requires that every document to be filed at the court must "... (e) *state the name of the party **on whose behalf** it is filed*" (emphasis added).
31. Obviously, only a natural person can swear an oath or sign a witness statement. When a company (or other legal entity) is the applicant, it cannot give evidence itself. Often a lawyer will give the evidence, but just as often a director or other officer of the company might give such evidence. It would be entirely contrary to the principle of separate legal personality for the Court to say that a director giving evidence on behalf of a company somehow becomes the party to that application alongside (or in substitution for) the Company. Similarly, when a lawyer gives the evidence, he or she does not become the party.⁵
32. The common (and entirely uncontroversial) practice of lawyers swearing affidavits or signing witness statements in commercial litigation was recognised by Mr Justice Wallbank at paragraph 140 of his judgment in these proceedings delivered on 15 April 2021.⁶

The signatories of the application notices are ambiguous (ground B3 at p 7 of the Application Notice)

33. Mr Titarenko's point here is difficult to discern. Mr Titarenko says it is ambiguous whether the application notices are signed "*on behalf of Agon... (acting on behalf of their lay clients) or alternatively ... signed by Agon's employees acting as individual legal practitioners on behalf of their lay clients, and accordingly other employees/partners of Agon (or Agon itself if it is a legal person) are not involved.*"
34. The issue of signatories to court documents has already been fully ventilated before the Court in the course of Appleby (BVI) Limited's application in separate proceedings to strike out Mr Titarenko's claim against that firm. The Court is reminded that Practice Directions 1 of 2007 and 1 of 2008 both provide that "*...all court documents drafted by a legal practitioner should bear his/her signature. Legibly printed below the signature should be the name of the signatory and, if applicable, the firm for which he or she is a legal representative as this would allow for easy identification.*"

⁵ To the extent that it is necessary to give authority for this trite proposition, the Court is invited to consider the well-known passage from the speech of Lord Macnaghten in *Salomon v A Salomon & Co Limited* [1897] AC 22 at 51: "*The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the act. That is, I think, the declared intention of the enactment.*" [Auths/2].

⁶ *Emmerson International Corporation & Ors v Renova Industries Limited & Ors* BVIHC(COM) 2013/1060; delivered 15 April 2021 per Wallbank J [Volume B/9].

35. Each of the application notices referred to by Mr Titarenko complies with these requirements. There is no ambiguity whatsoever: Miss di Iorio, Mr Fay QC or Mr Quinn (as the case may be) have signed the application notice, have given the name of the firm for which they are a legal representative, and have identified the party or parties on whose behalf the application is being filed.
36. Mr Titarenko's applications when he was represented by Lennox Paton are in identical form. For example, his Notice of Application dated 19 February 2019 (relating to purported service on Mr Kolychev) concludes with the signature of Mr Scott Cruickshank, followed by the printed name of Mr Cruickshank, followed by "*Lennox Paton Legal Practitioners for the Applicant*".

The grounds of the application are summarised as a language exercise (ground B4 at p 8 of the application notice)

37. Mr Titarenko posits (without any explanation as to their relevance) two "*theoretical options*". Either the grounds of the application are set out in brief in the application notice and amplified by Mr Andrews in the evidence or the grounds are stated first in the witness statement and then summarised in the notice of application. Mr Titarenko then says it is implied in the language used in the notices of application that the second theoretical option has been followed and that the respondent to the applications should not rely on the exact wording of the summary in the application notices.
38. CPR 11.7 has been reproduced at paragraph 21 above. It requires a brief statement of the grounds relied on (which could of course include legal as well as factual grounds). The purpose of CPR 11.7 was stated by Denys Barrow JA in **Dupres v George** as follows: "*Among the benefits of complying with that requirement, it seems to me, are that compliance serves to inform all concerned of the grounds of the application, to focus the mind of the applicant on the merits and demerits of his application and to provide conceptual clarity to all concerned. It also serves to direct the court's attention when reading the relevant papers and so avoids a waste of time and effort.*"⁷
39. Mr Titarenko's "chicken or egg" dilemma as to whether the application notice or the evidence was the first to be drafted is incomprehensible. Furthermore, it is irrelevant. No possible consequence flows from the sequencing of the drafting or signing of documents which are in any event generally filed, and served, at the same time.

Ground B5 of the Application Notice

40. Ground B5 simply repeats one of the reliefs sought by the Renova Parties in the Combined Representation Application issued on 27 March 2020. There appears to be no complaint about that form of relief. It is not at all clear how this is a ground for Mr Titarenko's strike out application.

⁷ Dupres v George (Civil Appeal No.47 of 2005; delivered 5 January 2007) at paragraph 4 [Auths/1]

Grounds B6 to B12 of the Application Notice

41. Mr Titarenko is correct at B6 that Mr Andrews is not admitted to practise in the Territory. Nobody has ever suggested otherwise. But as discussed above, Mr Andrews is not making any of the applications. They are made by the respective applicants to them; Mr Andrews is merely providing the factual evidence in support. This does not contravene the Legal Profession Act and is standard practice in large and complex matters, as Mr Justice Wallbank himself made clear at paragraph 140 of his judgment in these proceedings delivered on 15 April 2021.
42. Neither has DLA Piper LLP in any way purported or held itself out to be (nor indeed could it be) either a BVI legal practitioner or on record for the Renova Parties in the BVI proceedings. It is retained by the Renova Parties in connection with the litigation: a party to BVI litigation is entirely free to take advice from whomsoever it pleases, in as many jurisdictions as it wishes. That is not a contravention of the Legal Profession Act.
43. What Mr Titarenko says about the “Foreign Representation Practice” (ground B11) and the “Corporate Representation Practice” (ground B12) is mere supposition.⁸ Even if true, neither practice is unlawful as being in contravention of the Legal Profession Act. The assertion that the practices constitute a breach of CPR69B.4(4) is not understood. As the Court knows, the Renova Parties are represented by legal practitioners who are admitted to practice in the Territory and who are on the Roll of Practitioners. Nothing in the Renova Parties’ applications is an abuse of the process of the Court.

Grounds B13 to B14 of the Application Notice

44. At B13, Mr Titarenko repeats quite extraordinary allegations against the Court. Those allegations are wholly unsubstantiated and entirely gratuitous. They have no bearing on the Application save to cast very serious doubt on the genuineness of Mr Titarenko’s application.
45. The relevance of B14 to the present application is not understood; however, if Mr Titarenko means to suggest that there is some contradiction between the Renova Parties’ approach with respect to (a) the representation of Romos and Goldfort; and (b) the allegedly defective applications, that is misconceived and not accepted. The position with respect to the representation of Romos and Goldfort is entirely different; the CPR require Romos and Goldfort to be represented by a legal practitioner, they are not. The Renova Parties are represented by legal practitioners, who have properly filed court documents in accordance with the relevant practice directions, as set out above.

Conclusion

46. Despite the robust case management which finally led to a trial of the “Main Claims” being re-listed for 2023, this litigation remains bedevilled by applications by Mr Titarenko (of which this is but one) which:

⁸ Mr Titarenko’s (unevidenced) allegation that Agon Litigation conducts itself in the manner described at B11 is remarkable and well beneath the standard expected of any litigant, whether represented or not.

- (i) Are a shocking waste of the scant time and resources of the Court, at the expense of other litigants, and a similar waste of the resources of the parties (including the Abyzov Parties);
 - (ii) Seek to re-open (in some cases repeatedly) judgments and orders of the Court without any basis for doing so;
 - (iii) Are deliberately (and without consultation with respondents) given short time estimates so that they will be part-heard and involve yet further time and cost;
 - (iv) Seek to avoid any costs orders being made against Mr Titarenko, however parlous his conduct;
 - (v) Are often withdrawn at the last minute;
 - (vi) If not withdrawn are often supported by unfiled evidence and submissions provided to the Court and the parties (Mr Titarenko appears to consider himself exempt from any requirement to pay filing fees) at the absolute last moment, often literally minutes before the commencement of a hearing; and
 - (vii) Make scandalous and unsubstantiated allegations against the judiciary, the court staff, any and all legal practitioners (not only those acting for his adversaries but also those acting for his co-claimants).
47. The time when Mr Titarenko might have been thought to be raising novel and interesting legal points is long gone. He is engaged in a deliberate and abusive campaign to derail the proceedings and yet avoid the financial consequences of his actions.
48. Both the Court and the parties have yet again been subjected to sustained abuse and have had to expend time, effort and money dealing with another misconceived application launched by a man whose interest in these proceedings arises purely from a limited assignment of interests, parasitic on the claim of another party. The amount of time and effort being devoted to his countless applications before this Court in which he seeks to delay and frustrate these proceedings is disproportionate and in breach of the overriding objective, notwithstanding the value of the claims as a whole.
49. The Court's resources are not infinite; neither are the resources of the Renova Parties. It is simply unfair to subject a party to these nonsensical and baseless arguments, particularly when they have been rehearsed again and again. A robust case management approach is not inconsistent with fairness to all parties. Mr Titarenko's repeated efforts to stall applications already in train, to strike out applications before they have come on for hearing, to issue "cross-applications" with respect to them in the hope of delaying their progress and/or to re-open decided cases and issues and his repeated attacks on the integrity of every other party, lawyer, the Bench and the Registry, should not be entertained further.
50. For the foregoing reasons, the Renova Parties ask the Court to dismiss the strike-out application and to award the Renova Parties their costs on the indemnity basis."

Further submissions at the hearing

- [13] At the hearing, Mr. Titarenko first submitted that the purported Respondents additional to the Renova Parties had been served. This concerned the 14th to 20th named Respondents to this application. In this regard he relied upon a “Second Affidavit of Andrey Titarenko and Vladimir Niyazov” dated 10th November 2021. Mr. Titarenko orally made a declaration that all the Respondents had properly been served. He said these Respondents had denied that they were served or that they have rejected service. Mr. Titarenko argued that he expected no response from the Renova Parties to this oral application as they were not parties to it. Mr. Titarenko submitted that there are negative inferences to be drawn from personal service.
- [14] Mr. Titarenko raised a number of other arguments at the hearing. In summary, these included:
- (1) Under English law there is a rule, as part of the English Civil Procedure Rules,⁹ that the CPR are to be strictly complied with. He submitted that this rule applies in this jurisdiction too, by virtue of section 11 of the Eastern Caribbean Supreme Court (Virgin Islands) Act¹⁰ (the ‘Supreme Court Act’) and as a general rule of common law. Mr Titarenko contended that CPR26(4) already provides for strict compliance with rules, as even breach of a minor rule can result in an unless order. I understood Mr. Titarenko to be advancing this proposition to support a contention that the Renova Parties are (allegedly) in breach of the CPR in not having affidavits supporting their applications, and to counter the submission made at paragraph 23 of the Renova Parties’ skeleton argument that even if there were some error in procedure or failure to comply with a rule in connection with the applications, that would not in itself invalidate them; per CPR 26.9.
 - (2) Moreover, urged Mr. Titarenko, the Court has no jurisdiction to make orders outside the framework of the CPR.
 - (3) Under the English CPR, courts have jurisdiction to review and amend its own orders. Mr. Titarenko submitted that to the extent that our CPR contains no such provision (it does not), then the same section 11 of the Supreme Court Act imports this into this jurisdiction. I understood Mr. Titarenko to be advancing this proposition to counter the submission made at footnote 2 in paragraph 6 of the Renova Parties’ Skeleton Argument that there is no equivalent in the Eastern Caribbean CPR to English CPR 3.1(7) and in

⁹ English CPR 1.1(2)(f) which provides:

“Dealing with a case justly and at proportionate cost includes, so far as practicable — [...] (f) enforcing compliance with rules, practice directions and orders.”

¹⁰ Cap. 80.

the absence of that rule, the Court only has power to amend or vary an order under the slip rule; absent a slip, the aggrieved party's only course is to appeal.

DISCUSSION

- [15] Having considered both Mr. Titarenko's and the Renova Parties' submissions, I am persuaded by learned Counsel for the Renova Parties that their submissions contained in paragraphs 4 to 45 of their skeleton argument, set out above, are correct. I adopt those submissions. For those reasons the application will be dismissed.
- [16] The following further observations would appear to be warranted, although they were not matters that were the subject of full and detailed submissions at the hearing from Counsel for the Renova Parties at the hearing. Mr. Titarenko, who represented himself, has raised some of these points on numerous other occasions as well as at this hearing.
- [17] First, it should be noted that the Combined Representation Application is no longer part-heard; it has since been determined in favour of Mr. Titarenko and the parties associated with Emmerson International Corporation.
- [18] Secondly, to the extent that Mr. Titarenko seeks to argue matters which have already been decided, on the basis that extant costs issues may be affected by whether or not Mr. Titarenko would or should have won for other reasons, there is a procedure whereby the Court can make such a determination, if necessary, under carefully case managed conditions. It is not engaged by launching an application or cross application such as this, the effect of which is to continue to argue, in parallel proceedings, a matter that has already been determined or is otherwise part-heard.
- [19] Thirdly, Mr. Titarenko's recourse to section 11 of the Supreme Court Act is misplaced. Merely because our CPR does not contain provisions equivalent to the English Civil Procedure Rules does not mean that there is a lacuna which requires recourse to section 11 of the Supreme Court Act to fill. This is because our CPR have now been in operation for some 22 years as a self-contained, independent code, crafted to serve the unique civil procedure requirements of the nine States and Territories that comprise the Eastern Caribbean Supreme Court Circuits. Our CPR have undergone their own organic development, including with specific reference to certain jurisdictions and Courts (this Commercial Court included). They have also accrued a

body of case law jurisprudence for their interpretation. This is a world away from that which pertained prior to the introduction of our CPR, where there was more direct reliance upon the English Rules of the Supreme Court and their interpretation by the courts of England and Wales. It is misconceived to proceed from an assumption that our CPR are intended to be fundamentally the same, or to the same effect, as the English Civil Procedure Rules, but merely using different language and with some relatively minor variations. If that were correct, then there would be no point in the Eastern Caribbean Supreme Court having its own CPR; the English Civil Procedure Rules could simply have been adopted. The notion that the English Civil Procedure Rules stand behind our own CPR as a set of dominant rules does not give due credit for the fact that our own rule making body has taken positive decisions, now over many years, as to how rules are to be framed and what they should, and should not, make provision for. This does not detract from the interpretative value of the English White Book, which remains instructive, nor indeed of the facility afforded by section 11 of the Supreme Court Act to fill genuine gaps. But the English Civil Procedure Rules should not be seen as a more complete or more perfect paradigm than our own CPR, from which provisions can be taken and inserted into our own to render them, and their interpretation, the same. Our own CPR fall, first, to be interpreted in accordance with their own terms. That must always be this Court's starting point.

[20] By section 11 of the Supreme Court Act, it is where no special provision is contained in our CPR or other law applicable in the BVI, that the jurisdiction of our courts shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in the High Court of Justice in England. As our Court of Appeal stressed in **Veda Doyle v Agnes Deane**¹¹ section 11 of the Supreme Court Act relates solely to the manner of the exercise of the jurisdiction of the High Court, and only where no special provision is contained in our CPR and other laws that the procedural law administered in the High Court of Justice in England is to be treated as imported.

[21] In providing for circumstances in which our Court can vary or amend its own sealed orders, namely under the slip rule (CPR 42.10 – 'Correction of errors in judgments or orders'), our own CPR do make special provision for such variation or amendment. That those circumstances are narrower than allowed under English law is not to be seen as an absence of special provisions

¹¹ Grenada HCVAP 2011/020 (unreported, delivered 16th April 2012) at paragraphs [6], [8], [9] and [10] (Pereira JA).

justifying recourse to importation of English procedural law. Rather, the narrowness of the circumstances amounts to a deliberate setting of parameters within which the Court can exercise jurisdiction.

[22] Similar considerations apply to lack of an equivalent in our CPR to the English CPR 1.1(2)(f), which Mr. Titarenko refers to as the ‘Strict Compliance Rule’. This provision is an interpretative key to the English Civil Procedure Rules, as reformed in 2013 pursuant to the set of reforms presided over by Lord Justice Jackson. The centre point of those reforms was a reformulation of the Overriding Objective to specify that this objective is ‘enabling the court to deal with cases justly **and at a proportionate cost**’ (my emphasis added). Whilst this is not the place to consider in depth the nature of the reformed English Civil Procedure Rules as compared to our CPR, it can be seen that the task of the English courts is no longer only to deal with cases justly but also with the express requirement to do so at a proportionate cost. This is also reflected in other, considerably more extensive, provisions about costs in the reformed English Civil Procedure Rules. Our own Overriding Objective of course contains a provision at CPR1.1(2)(3) that dealing with cases justly includes, along with four other factors, dealing with cases in ways that are cost proportionate. But dealing with cases justly remains the sole goal of our Overriding Objective and CPR. This is not a distinction without a difference. It can readily be seen, for example, that under the reformed English Civil Procedure Rules, costs considerations might more readily be treated as a weighty factor against, for example, a more extensive disclosure order than the justice of the case and the rules on disclosure would otherwise warrant.

[23] Our CPR did not undergo the same reforms. The English CPR 1.1(2)(f) is an interpretative key to a different set of rules. The Overriding Objective as stated in our CPR 1.1, namely of enabling the Court to deal with cases justly, remains the interpretative key to our CPR, *per* CPR 1.2(b).

[24] A further interpretative key, which follows from our particular Overriding Objective, is contained in CPR 26.9. By 26.9(2):

“An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders.”

This militates against a strict, technical approach to compliance, if such an approach would mean that a case is not dealt with justly. Indeed, CPR26.9(3) positively states that the Court can make orders to put matters right. CPR26.9(4) goes further and provides that the Court can do so of its own motion. The CPR clearly thus contemplate that the Court should consider ‘putting matters right’ rather than to strike out a claim or application on account of such a failure or breach. CPR26.9(1) establishes limits to the application of this rule, by stipulating that it only applies ‘where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.’

- [25] It can thus be seen that our CPR already contains its own interpretative keys. It cannot sensibly be said that our CPR has a lacuna in this regard that needs to be filled. Our CPR do not require the English CPR 1.1(2)(f) to be read into it – they work on their own terms without it.

Allegation that BVI legal system is ‘seriously corrupted’

- [26] Fourthly, Mr. Titarenko’s grounds, expressed at B13 of his Notice of Application, that the legal system in this jurisdiction is ‘seriously corrupted’, and that I appear to encourage this, call for this Court’s comment. From a review of the authorities, it would appear that Mr. Titarenko’s understanding of the approach of our, and the English, legal practice in relation to the unlawful practice of law is seriously at variance with that which in fact prevails.
- [27] I share the incomprehension of learned Counsel for the Renova Parties how this could be a ground for Mr. Titarenko’s application, since the grounds for striking out an application (here, eight applications) must relate to the form, content and/or procedural rectitude of that application(s) and not how our legal system might erroneously treat with it.
- [28] Subsequent to the hearing in this matter, I have addressed Mr. Titarenko’s allegations that BVI law firms contravene the Legal Profession Act (‘LPA’) if they are organized as legal persons (e.g. as limited companies) in a written judgment in **Andrey Titarenko v Appleby (BVI) Limited & Ors.**¹² For the detailed reasons given there, such a practice does not contravene the LPA. It is a legitimate corporate option that several BVI law firms had taken advantage of well before that case was decided.

¹² BVIHCM 2021/0057 (unreported, delivered 17th March 2022).

- [29] Furthermore, in relation to our legal system's approach to unlawful practice of law, Mr. Titarenko contends that the Court should adopt a more rigorous and proactive approach towards enforcement than simply to disallow a person who unlawfully practices law from recovering his or her costs. Mr. Titarenko contends that the Court should enforce this prohibition in section 18 of the LPA by disallowing a BVI legal practitioner from recovering costs for work done in 'aiding and abetting' unlawful practice of BVI law by, for example, lawyers overseas.
- [30] Quite apart from the fact that, as learned Counsel for the Renova Parties remarked, Mr. Titarenko has not adduced evidence of any such 'aiding and abetting' here (which is fatal to any such ground for Mr. Titarenko's present application), it has not been the approach of the courts either in England or in this jurisdiction to penalize those legal practitioners who work with unlawful practitioners by treating their own fees as irrecoverable. A brief look at the principal authorities bears this out.
- [31] In this jurisdiction, in **Garkusha v Yegiazaryan & Ors**.¹³ our Court of Appeal dealt with a disputed claim for costs. There, the paying party was presented with a claim for costs in which the bulk of the work in preparing for an application in this Court had been done by lawyers not on our Roll, in a large onshore law firm with offices in London and Moscow. This had been in line with the practice that had arisen prior to the LPA. The onshore firm's costs were more than twice as high as those of the BVI law firm, indicating that the onshore firm had done most of the work. The paying party aggressively took objection against both the onshore and the BVI firms' costs and disbursements. These objections included in relation to relatively miniscule amounts. No viable objection appears to have been spared. The paying party did not, though, object to the BVI law firm's costs on the basis that it had 'aided and abetted' an unlawful practice. The onshore law firm's costs were disallowed, but not the BVI law firm's reasonable costs of its own work. The Court of Appeal allowed those costs, apart from a few small reductions for other reasons.¹⁴ There was no question raised that the BVI law firm should be able to recover its costs incurred for BVI legal practitioners' own work.

¹³ BVIHCP2015/0010 (unreported, delivered 6th June 2016).

¹⁴ BVIHCP2015/0010 (unreported, delivered 6th June 2016) at paragraphs [76] and [78] (Webster JA (Ag.)).

- [32] Similarly, in **Yao Juan v Kwok Kin Kwok & Anor**.¹⁵ our Court of Appeal disallowed the costs of two associate lawyers, not on the BVI Roll, who worked on that matter in a BVI law firm's Hong Kong office. After a review of the authorities, the Court of Appeal focused upon the admission status (or rather lack thereof) of the two associates concerned and disallowed recovery of their costs. Again, there was no question raised that the other costs of legal practitioners on the Roll in that BVI law firm should be treated as irrecoverable.
- [33] Yet on Mr. Titarenko's case, in **Yao Juan v Kwok Kin Kwok & Anor** the result should have been that the entire law firm should be penalized for using lawyers not on the Roll, by having all the costs of its legal team disallowed. Clearly that has not been the Court of Appeal's perspective. And, indeed, it does not appear to have been the approach of any of the paying parties who objected to the costs claims reviewed in the various Court of Appeal authorities.
- [34] Nor has Mr. Titarenko's approach been that of the English Courts. In **Agassi v Robinson (Inspector of Taxes) (No. 2)**¹⁶ the English Court of Appeal, with a specially constituted panel and with the benefit of legal submissions from senior and junior Counsel of both the Bar Council and the Law Society, considered an objection to the recovery of costs of a firm of tax law experts, who had, in part, fulfilled the function of solicitors in certain litigation, whilst not being admitted to practice as solicitors. One of that firm's staff, who was not a solicitor, had used a certain professional entitlement to instruct a Barrister to represent the claimant before the courts. The claimant had been successful and was awarded costs. The Court of Appeal ruled that costs (if any) of those parts of the firm's work which were unlawful, as 'acting as a solicitor' contrary to the English Solicitors Act 1974, would be disallowed,¹⁷ but countenanced that some of the firm's other costs might be allowable as a disbursement.¹⁸ The English Court of Appeal adopted a focused and restrained approach, distinguishing between costs of that firm for unlawful work and lawful work. It was remarked in the Postscript¹⁹ to the judgment that the firm in question, and similar firms, had specialist expertise in the field of tax law often far exceeding that of solicitors, and that if a firm of solicitors been instructed in that litigation, its fees might well have been three times as high as those of the firm in question. The English Court of Appeal went on to suggest ways in which such specialist firms, who were not

¹⁵ BVIHCM2018/0042 (unreported, delivered 1st June 2021) at paragraph [88] (Ellis JA (Ag.)).

¹⁶ [2005] EWCA Civ 1507.

¹⁷ [2005] EWCA Civ 1507 at paragraph 28 (Dyson LJ).

¹⁸ [2005] EWCA Civ 1507 at paragraph 79 (Dyson LJ).

¹⁹ [2005] EWCA Civ 1507 at paragraph 80 to 84 (Dyson LJ).

solicitors, could become professionally established to conduct litigation. The English Court of Appeal's approach was encapsulated in the following remark:²⁰

“There is nothing in our decision that will prevent Mr. Agassi employing [the firm of tax law experts who were not solicitors] in future in the way he has done, nor prevent other members of the Chartered Institute of Taxation from taking advantage of the Licensed Access Scheme. **It simply limits the extent to which it can be done at the expense of the opposing party.**” (My emphasis added.)

[35] It warrants observing, too, that in **Agassi** there was no question raised of the Barrister's fees being treated as irrecoverable for having worked with persons who potentially performed unlawful acts.

[36] The approach of our courts, including the Court of Appeal, has been identical to that of the Court of Appeal in England in **Agassi**. It cannot sensibly be said that our legal system has become ‘corrupted’ at all in this regard, let alone ‘seriously corrupted’.

Mr. Titarenko's oral application for declarations as to service

[37] Lastly, in my respectful judgment, it would not be appropriate to accede to Mr. Titarenko's oral application for a declaration that the 14th to 20th purported Respondents to this application have been served. Mr. Titarenko contends they were served in early July 2021. The hearing took place some three months later in mid-November 2021. As I have stated, they did not appear at this hearing. They may not have been served properly. Mr Titarenko says that they dispute service. Procedural fairness reasonably requires that Mr. Titarenko should have made his application for a declaration in writing and served that application upon those Respondents to give them notice that such declaratory relief is being sought, and an orderly opportunity to come before the Court to explain their position. Mr. Titarenko had ample opportunity to make such a written application, but he did not.

[38] However, such an application would not save Mr. Titarenko's application. For the reasons submitted by the Renova Parties it ought to be dismissed. The Renova Parties' learned Counsel submitted that costs should in that case be awarded on an indemnity basis against Mr. Titarenko. Whilst, in my respectful judgment, the Renova Parties ought to have their costs of the application, it cannot be on the indemnity basis. It is well established, following the line of

²⁰ [2005] EWCA Civ 1507 at paragraph 80 (Dyson LJ).

authorities from our Court of Appeal decision in **The Attorney General of Saint Christopher and Nevis & Anor. v Queensway Trustees Limited**²¹ that our CPR do not permit the award of costs on that basis. Rather, as stated there in the Court of Appeal by Justice of Appeal Gordon, the CPR retained provisions pertaining to assessed costs ‘to preserve the court’s inherent jurisdiction to so regulate its own procedure as to protect a litigant from being put upon by an over-bearing or oppressive opponent, or for the court to sanction its finding that the conduct of the litigation was deserving of moral condemnation’.²² ‘Assessed costs’ are the standard in the Commercial Court, per CPR 69B.11 and 12.

DISPOSITION

[39] For the reasons stated above:

- (1) Mr. Titarenko’s application filed on 6th July 2021 stands dismissed;
- (2) Mr. Titarenko shall pay the Renova Parties their costs of this application, to be assessed if not agreed within 21 days;
- (3) Mr. Titarenko’s oral application for declarations as to service stands dismissed.

Gerhard Wallbank
High Court Judge

By the Court

Registrar

²¹ Saint Christopher & Nevis Civil Appeal No. 15 of 2005 *The Attorney General of Saint Christopher and Nevis & Anor. v Queensway Trustees Limited* (unreported, delivered 3rd December 2007) (Gordon, JA).

²² See (2) of the Headnote.