

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2013/0022

In the Matter of the New Huerto Trust

And

**In the Matter of the Trustees Relief Act
and Part 67 of the Civil Procedure
Rules**

ROYAL FIDUCIARY GROUP LIMITED

(a Company Incorporated in Hong Kong)
(trustee of the New Huerto Trust)

Appellant

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mr. Mario Michel

Chief Justice
Justice of Appeal
Justice of Appeal

Appearance:

Mr. David Brownbill, QC for the Appellant

2014: May 2;
2015: October 26.

Civil appeal – Trust deed – Discretionary trusts – Deed of appointment – Power of appointment under trust – Whether power of appointment in trust deed permits trustee to exclude a named beneficiary from the objects of a discretionary trust in advance of appointing capital to other named beneficiaries

The appellant commenced proceedings in the court below seeking to exercise a power of appointment under a trust deed. The appellant claimed that the power of appointment in clause 2 of the trust deed allowed the trustee to exercise the power to permanently disentitle the settlor from benefiting under the trust deed. The appellant sought an order from the court to sanction the terms of a draft deed of appointment to this effect.

The learned judge found that the trust was a simple discretionary trust with two classes of discretionary beneficiaries which contained no express power to vary or revoke any

provision of the settlement as proposed in the draft deed of appointment. The learned judge held that clause 2 of the trust deed gave the trustee a power to appoint capital and income. Further, that the draft deed of appointment the court was asked to sanction would, in the absence of any express power to vary the trust deed, be a nullity.

The appellant appealed against the learned judge's decision on a number of grounds primarily arguing that the learned trial judge erred in holding that the trustee had no power under the trust deed to vary the terms of the settlement as proposed in the draft deed of appointment.

Held: allowing the appeal; and granting the declarations sought in the court below, that:

A trustee, in the absence of any contrary indication, can validly appoint property among two or more objects of the trust while excluding altogether one or more objects. In this case, the necessity for the trustee to have exercised the power of appointment by excluding the settlor in advance of appointing any property to the remaining objects arose only out of the desire to protect the trust property from an adverse claim against it. Following from this, there is no reason why the trustee could not, in advance of appointing any property to the objects of the trust, use the power of appointment to exclude one of them from benefiting under the trust. The result of this would be an increase in the property interests available for distribution to the children and remoter issue of the settlor, who are the intended beneficiaries of the settlor's benefaction.

Muir v Inland Revenue Commissioners [1966] 1 WLR 1269 applied; **Blausten v Inland Revenue Commissioners** [1972] Ch 256 applied.

JUDGMENT

[1] **MICHEL, JA:** This is an appeal against a decision of Bannister J [Ag.] sitting in the Commercial Court of the British Virgin Islands in which he declined to sanction the execution of a deed by the appellant (as trustee of the New Huerto Trust) purporting to exercise a power of appointment under the trust.

[2] The proceedings in the Commercial Court were commenced by a fixed date claim issued by the appellant, claiming:

1. A declaration that the trustees of the Trust have power under clause 2 of the trust deed (by which the Trust was established) to exclude permanently and irrevocably the settlor of the trust from any benefit under the Trust.

2. A declaration that the terms of a proposed draft deed of appointment under the said clause 2 are terms which the trustee can properly include in such a deed of appointment, and that the trustees shall be at liberty to execute the deed if, in their discretion, they consider it appropriate to do so.

[3] Clause 2 of the trust deed reads as follows:

“THE Trustees STAND POSSESSED of the Trust Fund and the income thereof UPON DISCRETIONARY TRUSTS for the benefit of the Beneficiaries or any one or more of them exclusive of the others in such shares and proportions and subject to such terms and limitations and with and subject to such provisions for maintenance, education or advancement or for accumulation of income during minority or for forfeiture in the event of bankruptcy or otherwise and such other conditions as the Trustees may from time to time appoint by Deed revocable or irrevocable executed before the Vesting Day.”

[4] The relevant portion of the terms of the proposed draft deed which the court was being asked to sanction reads as follows:

“The Appointor, in exercise of the power in clause 2 of the Trust and of every other power it enabling, hereby declares that the Appointor shall continue to hold the Trust Fund and the income thereof upon, with and subject to all of the trusts, powers and provisions of the Trust and of the September 2010 Deed, but as if the trust, powers and provisions of the trust had been varied as follows:

(1) in the place of the wording of clause 1 a) of the Trust there was substituted the following:

“a) “the Beneficiaries” means the children and remoter issue of the Settlor born after 6 December 2002 and who presently comprise the Settlor’s three sons ...”

[5] The September 2010 deed referred to in the proposed draft deed is a deed of appointment which declared the settlor’s children to be ineligible to receive benefits from the trust for a period of seven years. There was a similar deed of appointment in August 2010 which declared the settlor himself to be ineligible to receive benefits from the trust for a period of seven years. These two deeds declaring the settlor and his minor children to be ineligible to receive benefits

under the trust for a specified period were designed to lessen the incidence of tax payable by the settlor.

- [6] The power of appointment contained in the draft deed which the court was asked to sanction sought to declare the settlor permanently ineligible to receive benefits under the trust. This was intended not only to lessen the incidence of tax payable by the settlor, but more especially to prevent the trust assets from being treated by the Family Court in England as the property of the settlor, in the context of divorce and ancillary relief proceedings instituted by his wife in England.
- [7] The appellant, as the claimant in the court below, argued that the power of appointment in clause 2 of the trust deed allowed the trustee to exercise the power to disentitle the settlor from benefiting under the trust deed and thus increase the quantum of the interests of the remaining beneficiaries, who are the children and remoter issue of the settlor.
- [8] In the court below, the appellant placed heavy reliance on two cases decided by the English Court of Appeal which, counsel submitted, determined that a power of appointment in a trust deed to confer beneficial interests “in such shares and proportions ... as the trustee may from time to time appoint” permits the trustee to exclude named beneficiaries from the objects of the discretionary trust.
- [9] The first of the two cases relied on by the appellant was the case of **Muir v Inland Revenue Commissioners**.¹ In that case, by a settlement made in May 1947, a trust fund was established by a taxpayer to be held on trust for a specified class of persons living at the end of an appointed period. During the appointed period, the trustees were given wide powers over both income and capital and were empowered at their absolute discretion to appoint all or part of the capital to any of the beneficiaries, or to settle the property appointed for the benefit of any person in the identified class of persons.

¹ [1966] 1 WLR 1269.

- [10] By a deed dated 10th September 1952, made in exercise of the power to appoint capital, the trustees purported to declare new trusts concerning the trust fund, with the power to capitalise income and an ancillary power being omitted, but with the trusts as before in all other respects. Consequent on certain assessments to surtax made by the Inland Revenue Commissioners against the taxpayer, issues concerning the trust fund were adjudicated by the Special Commissioners of Income Tax and by the High Court on a Case Stated at the request of the taxpayer. Before the High Court, the Inland Revenue Commissioners raised an issue as to the probable ineffectiveness of the September 1952 deed, contending that the deed was not a proper exercise of the power conferred on the trustees by the 1947 deed of settlement. The High Court determined the issue in favour of the Revenue, resulting in the affirmation of the assessment of surtax made against the taxpayer.
- [11] On appeal by the taxpayer, the Court of Appeal held that on the true construction of the trustees' power to appoint capital, they were authorized to vary the settlement in the way in which they had done in the September 1952 deed, the language of the power being wide enough to enable the trustees to release their power to apply income towards payment of premiums on policies, and so the taxpayer had no interest in the income arising under the settlement and was not therefore assessable to surtax in respect of such income.
- [12] The second of the two cases relied on by the appellant in the court below was the case of **Blausten v Inland Revenue Commissioners**.² In that case, by a settlement made in July 1956, a taxpayer directed that various investments be held on trust for the benefit of a specified class which was to include his wife or widow. The trustees of the settlement had a discretion to pay the income from the trust fund accruing during the trust period or the whole or part of the trust capital to members of the specified class as they thought fit. The second schedule to the settlement, which defined the specified class, gave the trustees power to appoint,

² [1972] Ch 256.

with the settlor's consent, that any other person except the settlor be included as a member of the specified class. Clause 2(A) of the settlement gave the trustees power to appoint that the capital be held "upon such trusts ... for the benefit of any one or more of the specified class (but not so as to confer any benefit during the lifetime of the settlor ... upon the wife of the settlor) ... as the trustees shall think fit".

- [13] Following the enactment of the UK **Finance Act 1958**, the trustees exercised their power under clause 2(A) by appointing that the trust property should be held on like trusts to the original settlement, save that (1) the words "wife or widow" were omitted from the second schedule, thereby removing the taxpayer's wife from the specified class and (2) words were included whereby payments of income or capital could be made to the taxpayer's widow.
- [14] The taxpayer was charged to surtax in respect of that trust income. He claimed that the deed of appointment had omitted his wife or widow from the specified class and that the power of the trustees under the second schedule to appoint persons to be included in the specified class did not enable them to appoint the wife or widow to the specified class and that the relevant provision of the 1958 Act was not applicable in respect of the income from the trust fund. The Special Commissioners however decided the issue in favour of the Revenue, holding that the taxpayer's wife or widow had been excluded from the specified class with the effect that the power of the trustees to appoint "any other person" to the specified class must be construed so as to include the wife or widow.
- [15] On appeal to the High Court, Geoff J dismissed the taxpayer's appeal, holding that the trustees had by an appointment attempted to delete members from the specified class which there was no power to do and that the appointment was therefore of no effect and there was a liability to tax under the relevant provisions of the **Finance Act**.

- [16] On appeal by the taxpayer to the Court of Appeal, it was held that the appointment, which was in terms a resettlement on new trusts of the capital of the trust fund, was within the terms of the power of appointment and that, construed in the context of resettlement, the power to appoint to the specified class could not properly be exercised by appointing the wife. The Court of Appeal, in so holding, applied **Muir v Inland Revenue Commissioners**, which it had decided five years prior.
- [17] In the court below, Bannister J [Ag.] denied the appellant's claim for the court to grant the two declarations which the appellant sought.
- [18] In his judgment dated 8th November 2013, Bannister J [Ag.] found that the New Huerto Trust was a simple discretionary trust with two classes of discretionary beneficiaries – Class A (made up of the settlor alone) and Class B (comprising the settlor's children and remoter issue); that there is no power to add to the classes of beneficiaries; no express power to remove any beneficiary from either class; and no express power to vary or revoke any provision of the settlement.
- [19] Bannister J [Ag.] expressly held, in paragraph 12 of his judgment, that “the Trustee has no power under the Trust deed to vary the terms of the settlement as proposed in the draft” and that clause 2 of the Trust deed, which was relied on by the trustee to do that which it proposed to do by the draft deed “gives the Trustee a power to appoint capital and income”. He further held that the draft which he was being asked to approve “would not, as executed, appoint any property in favour of any person and would not, therefore, be an exercise of the power conferred by clause 2” and that “in the absence of any express power to vary, it would, accordingly, be a nullity”.
- [20] In arriving at the conclusions that he did, Bannister J [Ag.] expressly disagreed with the decision of the English Court of Appeal in **Blausten v Inland Revenue Commissioners**, which had held that the appointment in that case was one under

which the capital was directed to be held upon trusts for the benefit of members of the specified class, and that although the objectives of the trustees in making the appointment may not have been the kind of objective which the settlor had in mind when he conferred the power of appointment upon the trustees, the appointment nevertheless fell within the power. Bannister J [Ag.] stated quite categorically that Buckley LJ, who gave the lead judgment in the Court of Appeal, was obviously wrong when he found that what was done by the deed of appointment in that case was clearly within the terms of the power of appointment. He noted that the **Blausten v Inland Revenue Commissioners** case is mentioned in three of the standard books on trusts, namely, **Lewin on Trusts**,³ **Underhill and Hayden's Law of Trusts and Trustees** and **Snell's Principles of Equity**,⁴ but never in relation to the proposition that a special power of appointment may be used to vary the provisions of a discretionary, or indeed any other, trust. He further noted that none of the standard works on trusts rely on the case for the proposition for which it was relied on in the present case, nor has there been reference to any authority, whether English or otherwise, in which the proposition in **Blausten v Inland Revenue Commissioners** relied upon by the appellant has been followed.

- [21] In terms of **Muir v Inland Revenue Commissioners**, where the English Court of Appeal held that a purported exercise of a special power of appointment was effective to enable the donee of the power to settle the whole fund on trusts identical to those contained in the original settlement, but with the omission of a power contained in the original deed to capitalise income, Bannister J [Ag.] took the view that the decision in that case was expressed to have been reached on the language of the clause conferring the power of appointment and in the absence of authority, and in any case was made against the background of a settlement which had itself created beneficial interests, so that any settlement would be to the same effect. He concluded therefore that that case did not assist the appellant in this case.

³ 18th edn. (Sweet & Maxwell, 2012)

⁴ 31st edn. (Sweet & Maxwell, 2005).

[22] The appellant appealed the judgment and order of Bannister J [Ag.]. The grounds of appeal are as follows:

- “(a) The learned judge was wrong to find that the Appellant trustee has no power under the New Huerto Trust deed to vary the terms of the settlement as proposed in the draft deed of appointment. The New Huerto Trust deed, on its true construction, enables the trustee [to] vary the terms of the trust by exercise of the powers of appointment and/or advancement contained in clauses 2 and 4.1 of the deed. The learned judge accordingly ought to have held that there was power to vary the terms of the settlement as proposed in the draft deed of appointment.
- (b) The learned judge was wrong to find that the draft deed of appointment would not be an exercise of the power contained in clause 2 of the New Huerto Trust deed because it did not have the effect of appointing any property in favour of any person. Instead, the learned judge should have found that whether or not property was appointed in favour of any person through exercise of the power of appointment (in clause 2) or the power of advancement (in clause 4.1) was irrelevant to the issues before him.
- (c) The learned judge was wrong to find that the draft deed of appointment would be a nullity if executed by the Appellant.
- (d) The learned judge was wrong to find that the decision of the English Court of Appeal in *Blausten v Inland Revenue Commissioners* [1972] Ch 256 was wrongly decided and should not be followed. Instead, the learned judge ought to have found that that decision was good law and accurately reflected BVI law as well as English law, and ought to have followed the decision.
- (e) The learned judge was wrong to find that the fact that certain practitioner works did not cite *Blausten v Inland Revenue Commissioners* [1972] Ch 256 (as authority for the proposition that such a power of appointment could be used to vary the provisions of any trust) cast doubt on the validity of the decision on that point. Further, the learned judge failed to have regard to the fact that *Thomas on Powers*, a leading work on powers of appointment, did favour the view that powers of appointment could be used to vary the terms of a trust.
- (f) The learned judge was wrong to find that clause 2 of the New Huerto Trust deed did not confer a power to appoint on discretionary trusts and instead only conferred [the] power to make appointments which created beneficial interests. On its true construction, clause 2 [of] the New Huerto Trust deed does confer power to appoint on discretionary

trusts and the learned judge ought to have so found. Further or alternatively, the learned judge ought to have found that clause 4.1 of the New Huerto Trust deed conferred such power.

- (g) The learned judge was wrong to find that the decision of the English Court of Appeal in *Muir v Inland Revenue Commissioners* [1966] 1 WLR was irrelevant. Instead, he should have found it was not only relevant, but good law and accurately reflected BVI law and should have followed that decision.
- (h) The learned judge was wrong to find that, if a trustee could amend a trust by executing a power of appointment, that would have the effect that a trustee could also add beneficiaries by “re-settling”. Further, the learned judge ought not to have treated that point as relevant to the issues before him.
- (i) The learned judge was wrong to find that the decision in *Blausten* “conflicted with” the treatment in the standard works [on] the nature of special powers of appointment. The learned judge ought to have had regard to the fact that none of the standard works referred to by him criticised the decision in *Blausten* and ought to have held that the absence of any discussion of the decision in *Blausten* (on the proposition for which that case was relied on before the learned judge) was irrelevant to the issues before him.
- (j) The learned judge was wrong to find that the decisions of the English Court of Appeal in *Blausten* and *Muir* ought not to be followed and instead ought to have followed those decisions.
- (k) The learned judge was wrong to find that clause 1(4) of the draft deed of appointment conferred an unlimited power in the future to vary the terms of the New Huerto Trust: the power of variation set out in that provision was not unlimited because it could only be exercised in order to amend in a way that would benefit one or more beneficiaries.
- (l) The learned judge was wrong to find that the draft deed of appointment (or any deed substantially in that form) ought not to be sanctioned by the court, and instead ought to have granted sanction for the entry by the Appellant into the draft deed of appointment.”

[23] Although there are twelve grounds of appeal contained in the appellant’s notice of appeal, the determination of the appeal really comes down to the question of whether a power of appointment in a trust deed authorising the trustee to appoint capital among named beneficiaries permits the trustee to exclude a named

beneficiary from the objects of a discretionary trust, and to do so even in advance of appointing any capital to the other named beneficiaries.

[24] Before this Court, as in the court below, the appellant relied heavily on the cases of **Muir v Inland Revenue Commissioners** and **Blausten v Inland Revenue Commissioners**. Apart from these two cases, the appellant provided four other cases in the authorities bundle filed in support of its submissions in the appeal, namely, **Prest v Petrodel Resources Limited and others**,⁵ **Muir or Williams v Muir and Others**,⁶ **In re Rank's Settlement Trusts**⁷ and **Rudy Lim et al v Precious Treasures Global Inc et al**.⁸

[25] **Prest v Petrodel** is related to the present case only in so far as it concerned ancillary proceedings in a divorce case in England affecting property not registered in the name of the husband but in which he had an interest and in which the wife was claiming a share. The legal issue in that case, however, centred on the capacity of the Family Court in the UK to treat property held by a company as property held in trust for the principal shareholder of the company.

[26] **Muir v Muir** was a case concerning the capacity of the donee of a power of appointment to do by delegation that which he could not do directly. The only connection of that case to the present case arises from the fact that it involved an issue of the limits of a power of appointment under a trust deed.

[27] **In re Ranks** was a case concerning the scope of a trustee's power of investment of trust funds arising from the exercise by the trustee of a power of appointment. Again, the case is connected to the present case only in so far as it involves the issue of the limits of a power of appointment under a trust deed.

⁵ [2013] UKSC 34.

⁶ [1943] AC 468.

⁷ [1979] 1 WLR 1242.

⁸ BVIHCVAP2008/0023 (delivered 17th December 2008, unreported).

- [28] **Lim v Precious Treasure Global Inc.** was about an application for leave to appeal and for a stay of proceedings pending appeal if leave to appeal is granted. It does not appear to be even tangentially relevant to the present case.
- [29] None of these other cases contained in the appellant's authorities bundle filed in support of its appeal provides any assistance to the appellant, and its appeal boils down, as far as authorities are concerned, to **Muir v Inland Revenue Commissioners** and **Blausten v Inland Revenue Commissioners**.
- [30] Just as the appellant placed heavy reliance on **Muir v Inland Revenue Commissioners** and **Blausten v Inland Revenue Commissioners** in making its submission that a power of appointment in a trust deed of the nature of the one contained in clause 2 permits a trustee to exclude named beneficiaries from the objects of a discretionary trust, Bannister J [Ag.] seemed to have placed equally heavy reliance, in arriving at his judgment that the power of appointment could do no such thing, on what was stated or not stated on the issue in the standard textbooks on trusts authored by **Underhill and Hayden**, **Lewis** and **Snell**.
- [31] True as it may be, and significant though it must be, that these textbooks refer to neither **Muir v Inland Revenue Commissioners** nor **Blausten v Inland Revenue Commissioners** on the issue of a resettlement of a trust – by means of the exercise of a power of appointment – being used to exclude someone from the class of objects of the trust, this basis for the conclusion arrived at by Bannister J [Ag.] is considerably weakened, if not destroyed altogether, when one considers Volume 98 of the Fifth Edition of **Halsbury's Laws of England**,⁹ which references both **Muir v Inland Revenue Commissioners** and **Blausten v Inland Revenue Commissioners** on exactly that point. Paragraph 544 of Volume 98 states as follows:
- “In the absence of any contrary indication in the power, an appointment, whenever made, under a power to appoint property among two or more objects will be valid even if any object is altogether excluded, or an

⁹ 5th edn. (LexisNexis, 2008).

unsubstantial, illusory or nominal share only is appointed to one or more objects, or is left to devolve on them in default of appointment. The trust instrument may authorise a resettlement for the principal purpose of excluding a specific beneficiary from the class of objects.”

[32] If the trustee can validly appoint property among two or more objects of the trust while excluding altogether one or more objects, then there is no reason why the trustee cannot, in advance of appointing any property to the objects of the trust, use the power of appointment to exclude one of them from benefiting under the trust. The necessity in this case for the trustee to have exercised the power of appointment by excluding one of the objects of the trust in advance of appointing any property to the remaining objects arose only out of the desire of the trustee to protect the trust property from an adverse claim against it which, if successful, would diminish the property interests available for distribution to the remaining objects of the trust.

[33] The fact too that both **Muir** and **Blausten** are mentioned without criticism in the standard textbooks on trusts is testament to their perceived quality, and the fact that none of the textbooks referred to by Bannister J [Ag.] appears to contain any proposition adverse to the proposition in **Muir v Inland Revenue Commissioners** and **Blausten v Inland Revenue Commissioners** that a power of appointment in a trust deed authorising the trustee to appoint property among beneficiaries permits the trustee to exclude named beneficiaries from the objects of a discretionary trust, may well justify the reliance placed by the appellant on these two decisions of the English Court of Appeal.

[34] It is worthy of note that the references to **Muir v Inland Revenue Commissioners** and **Blausten v Inland Revenue Commissioners** contained in Volume 38 of the Fourth Edition of **Halsbury's** dealing with trusts, focus on the certainty of objects and certainty of subject matter of the trust, while the references to these two cases in Volume 36 (2) dealing with powers, focus on powers of appointment of the nature of the power exercised by the trustee in the present case. The fact that when the cases are referred to in the mentioned textbooks they are referred to

only on the issue of the certainty of objects and of the subject matter of the trust, without any criticism of the proposition contained in them as to the capacity of the trustee to use the power of appointment conferred on it under the trust deed to exclude the settlor from benefiting under the trust does not, in my view, take away the persuasive authority of the judgments in the two cases.

[35] For me, I see no reason based on principle, in terms of the powers of trustees in the exercise of powers of appointment under a trust deed, why the trustee in this case could not properly exercise the power of appointment conferred on him by the trust instrument in excluding the settlor from benefiting under the trust, with the resulting increase in the property interests available for distribution to the children and remoter issue of the settlor, who are obviously the intended beneficiaries of the settlor's benefaction. And, as I stated earlier (in paragraph 32 of this judgment), why the trustee could not exercise this power of appointment even in advance of appointing any property interests to the other objects of the trust.

[36] Bannister J [Ag.], as a judge of the High Court of the Eastern Caribbean Supreme Court sitting in the Commercial Court in the British Virgin Islands, is of course not bound by the decisions of the English Court of Appeal, even on the same issue which he is adjudicating, but decisions of that court, although not binding precedents, have always been treated as persuasive authorities in the British Overseas Territory of the Virgin Islands and ought in my view to be so treated on the point in issue in this case.

[37] On both authority and principle, I would allow the appellant's appeal and grant the declarations sought by the appellant in the court below, as follows:

1. The trustee of the New Huerto Trust has the power under clause 2 of the trust deed of 2002 to permanently and irrevocably exclude the settlor of the trust from any benefit under the trust; and

2. The terms of the proposed draft deed of appointment under clause 2 of the trust deed excluding the settlor from future benefit under the trust are terms which the trustee can properly include in the deed of appointment, and the trustee is at liberty to execute the deed if, in its discretion, it considers it appropriate to do so.

[38] Before concluding the judgment, I should mention that in the first and second of its grounds of appeal, the appellant also canvassed clause 4.1 of the trust deed as providing a further or alternative basis upon which the trustee could vary the terms of the trust deed by the exercise of a power of advancement under the said clause 4.1. The appellant did not, however, place any great reliance on this as the basis of the variation of the trust deed and, indeed, the declarations which the appellant sought, as the claimant in the court below, were confined to declarations in relation to the exercise of the power of appointment in clause 2 of the trust deed. The appellant also did not place any great reliance on this issue in its submissions on appeal. In any event, having made a determination that the power exercised by the trustee in varying the trust by excluding the settlor as one of the objects of the trust, was validly exercised under the power of appointment contained in clause 2 of the trust deed, and having allowed the appeal on this basis, it is unnecessary to determine whether the variation could also have been effected under clause 4.1 of the trust deed.

[39] I need to express my profound regret to the appellant and counsel for the severe tardiness in the delivery of this decision, the preparation of which was delayed by the unavailability, when required, of the appellant's submissions on the appeal, as opposed to the submissions in the court below which were in the appeal bundle. The assistance of Forbes Hare was then sought and given in the provision of copies of the submissions so as to facilitate the preparation of the judgment. I trust though that the lateness in the delivery of the judgment did not negatively impact the appellant or counsel or, indeed, on the dispensation of justice, having regard to the discharge by the High Court in England, shortly after the judgment of

the Commercial Court in the BVI, of the freezing order which had impacted on the trust assets.

Mario Michel
Justice of Appeal

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Davidson Kelvin Baptiste
Justice of Appeal