

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

TERRITORY OF THE VIRGIN ISLANDS

BVIHCMAP2024/0029

BETWEEN

TAX

Appellant/Applicant

and

FDQ

Respondent

Before:

The Hon. Mde. Esco L. Henry
The Hon. Mr. Reginald Armour
The Hon. Mde. Gertel Thom

Justice of Appeal
Justice of Appeal [Ag.]
Justice of Appeal [Ag.]

Appearances:

Mr. Allan Wood KC with him Ms. Lesley-Ann Stewart and Ms. Kerri-Anne Mayne for the Appellant/Applicant
Mr. Paul Chaisty KC with him Mr. Mark Forte and Dr. Jane Fedotova for the Respondent

2025: Oct. 2

Civil Appeal – BVI Arbitration Act – interim injunction to restrain arbitration – Whether it is just and convenient to grant interim injunctive relief to restrain the respondents from pursuing the second arbitration proceedings while the appeal is pending – Whether the 20th August 2025 order of the learned justice of appeal declaring that a single judge of the Court does not have jurisdiction to grant the interim injunction sought - Court of Appeal's supervisory jurisdiction over arbitration – Relevant factors governing grant of injunction pending appeals - Anti-suit arbitration injunction

Reasons for Decision

- [1] This is an application filed on 29th July 2025 by the appellant/applicant for an interim injunction to restrain the respondent from taking any further steps to commence or pursue arbitration (in respect of a Licence Agreement dated 13th July 2018 (hereinafter the 'Agreement') made between the applicant and the respondent) including, but not limited to the commencement, continuation or prosecution of any new arbitration proceedings whether in furtherance of the respondent's notice of arbitration served on the appellant on 21st July 2025 or otherwise; the appointment of an arbitrator(s); the service or submission of pleadings or evidence; and any other step to commence or pursue arbitration proceedings pursuant to the referenced Agreement. The application was originally made on notice, for consideration by a single judge of the Court. It was supported by an affidavit of Dr. June Samuel filed on 29th July 2025¹.
- [2] Following an inter partes hearing on 20th August 2025, the learned justice of appeal ruled that a single judge of the court has no jurisdiction to grant the order sought in the application and adjourned the application for hearing and determination by the full court. The issue of costs was also reserved for determination by the full court.
- [3] By amended application filed on 2nd September 2025 the applicant maintained its application for interim injunctive relief and sought the additional relief of an order revoking the 26th August 2025 order that a single judge does not have jurisdiction to grant the injunction sought. The amended application was heard by the Full Court on 2nd October 2025.
- [4] The Court granted the injunction to restrain the respondent from continuing or prosecuting any new arbitration. It declined to consider the application to revoke

¹ Accompanied by Certificate of Exhibit 'JS-1' filed on even date.

the order that a single judge has no jurisdiction to grant the injunction. The applicant was awarded its costs to be assessed if not agreed. The Court indicated that it would provide its reasons for the decision at a later date. These are the reasons for the Court's decision.

BACKGROUND

- [5] The factual matrix is not in dispute. It was summarized in the affidavit testimony of the applicant's chief executive officer filed² in support of the application and by the learned judge in the 20th August 2025 order. For present purposes, only the material details of the dispute will be rehearsed.
- [6] By the Agreement dated the applicant and the respondent formalized an arrangement for the provision by the applicant and the use by the respondent of certain premises to operate a cardiology clinic, from which the respondent has since been excluded. The applicant and the respondent further agreed by the Agreement to the arbitration of disputes that may arise out of their agreement in accordance with the **Arbitration Act**³ of the British Virgin Islands ('BVI'). Consequent on the breakdown of their relationship the applicant commenced arbitration proceedings in the BVI on 21st January 2021, and the respondent counterclaimed seeking damages in the region of tens of millions of dollars. After protracted arbitration proceedings before a single arbitrator⁴ ('the First Arbitration Proceedings') a Final Award was made in the Applicant's favour on 21st February 2023.
- [7] The right to appeal the Final Award is contained in the **Arbitration Act 2013 ('the Act')**⁵. On 23rd March 2023 the respondent filed a Fixed Date Claim Form in the High Court in the BVI challenging the March 2023 award by way of appeal

² On 29th July 2025.

³ Act No. 13 of 2013.

⁴ Ms. Dancia Penn KC.

⁵ At paragraph 5(9) of Schedule 2.

and alleging serious irregularity and public policy concerns. On the same date the respondent filed a notice of application in the High Court for leave to appeal on several points of law. Leave was granted by Wallbank J on 13th June 2023. That appeal is yet to be heard.

[8] The respondent's appeal by way of Fixed Date Claim against the Final Award was heard in December 2023 and determined by Wallbank J. By judgment dated 25th June 2024, he found that the respondent's complaints of serious irregularity and errors of law had been made out to justify setting aside the Final Award in its entirety. Consequently, he ordered the setting aside of the Final Award rendered in the First Arbitration Proceedings ('the Setting Aside Order')⁶. He indicated at paragraph 747 of the judgment that by setting aside the Award in its entirety, this will 'give the parties an opportunity to refer their disputes to a differently constituted Tribunal if they so wish'. The applicant obtained leave to appeal that decision on 23rd October 2024 and filed its notice of appeal on 8th November 2024. That appeal also remains pending before the Court.

[9] In the meantime, the respondent invoked section 22 of the Agreement and commenced a new arbitration ('the Second Arbitration Proceedings') in the BVI International Arbitration Centre ('BVI IAC'). On 21st July 2025, the respondent served notice of the new arbitration on the applicant. It is common ground between the parties that the Second Arbitration Proceedings involves the identical subject matter, factual and legal issues as the First Arbitration Proceedings. It is not disputed that the Second Arbitration Proceedings are likely to utilize comparable time, expense and other resources as the first, which lasted for eighteen days and involved multiple witnesses. The parties have acknowledged that the Second Arbitration Proceedings will interrogate and seek to determine similar legal issues to those which arise in the appeal against the Setting Aside Order.

⁶ By Judgment and Order dated 24th June 2024.

[10] The applicant advanced eighteen grounds in support of its application for injunctive relief. It contended among other things, that the respondent's conduct in initiating the Second Arbitration Proceedings is vexatious and oppressive to the applicant, and breaches its equitable right not to be subject to vexatious, oppressive or unconscionable litigation or arbitral proceedings; the Second Arbitration Proceedings would lead to unnecessary duplication of costs and carries the risk of inconsistent factual and legal findings on identical issues; the appeal being pursued against the Final Award is of general and public importance involving serious issues in that the Court will address key issues that will clarify the interpretation and application of various provisions of the Act and the proper approach the Court should adopt when dealing with challenges to arbitral awards on the grounds of serious irregularity and errors of law. Those assertions were repeated in the affidavit in support.

[11] The applicant argued that damages would not be an adequate remedy because if the Second Arbitration Proceedings go ahead it will be deprived of the opportunity to fully exercise its right of appeal under the Act. Further, the balance of convenience favours the grant of injunctive relief to avoid the risk of inconsistent outcomes and protect its equitable right.

[12] The Application was accompanied by a Certificate of Urgency⁷. An amended certificate of urgency was filed on 2nd September 2025. In it, the applicant asserted that the application was urgent in light of the approaching 20th August 2025 deadline for filing its response to the Second Arbitration Proceedings.

[13] The respondent strenuously opposed the application for an injunction. It argued that there was no urgency and no justification to involve the Full Court on that basis. It was submitted that as a matter of discretion or jurisdiction the application

⁷ Filed on 29th July 2025.

should have been made to the commercial court. It submitted that in any event there is no merit to the application, and it should therefore be dismissed.

ISSUES

- [14] The two issues for consideration are:
1. Whether it is just and convenient to grant interim injunctive relief to restrain the respondent from pursuing the Second Arbitration Proceedings while the appeal is pending; and
 2. Whether to revoke the 20th August 2025 order of the learned Justice of Appeal declaring that a single judge of the Court does not have jurisdiction to grant the interim injunction sought.

Interim Injunction Applicant's Submissions

- [15] The applicant submitted that in accordance with Schedule 2, paragraph 5(9) of the Act, the Court has supervisory jurisdiction to hear and determine appeals in respect of arbitral decisions by virtue of the BVI being the seat of the original arbitration. Accordingly, this Court has jurisdiction to hear and determine the interlocutory injunction application before it. It was submitted that the proper course of action is the grant of an injunction to restrain the recently filed arbitration proceedings or an anti-arbitration injunction pending the determination of the appeal of which the Court is seised, on the ground that the second arbitral proceedings are an infringement of a legal or equitable right of the applicant or breach of such a right or because they are vexatious, oppressive or unconscionable. The applicant cited **Injazat Technology Capital Limited v Dr Hamid Najafi**⁸ and **Minister of Finance (Inc) and another v International Petroleum Investment Co and another**⁹ in support. Reliance was placed on **Injazat** for the proposition that the right not to be subjected to vexatious, oppressive or unconscionable litigation to arbitral proceedings constitutes an

⁸ [2012] EWHC 4171 (Comm).

⁹ [2019] EWCA Civ 2080.

equitable right which the applicant in the instant case invokes to seek injunctive relief.

[16] It was submitted that vexatious proceedings are typically characterized as those that subject the defendant to inconvenience, harassment, or expense that is grossly disproportionate to any legitimate benefit or outcome likely to be achieved by the party pursuing them. Oppressive litigation generally refers to conduct that is unjustly burdensome or harassing, often characterized by repeated or duplicative claims or the misuse of legal proceedings to pursue an improper collateral objective. Unconscionable litigation typically addresses conduct that is patently unfair or improper.

[17] On the applicant's behalf, learned King's Counsel Mr. Allan Wood stated that monies will need to be paid to the BVI IAC and to the arbitrator once one is appointed. In addition, costs will be incurred in the preparation of documents, legal submissions, and participation in hearings. He argued that if the second arbitration progresses, these steps will have to be undertaken concurrently with the preparation for, and the hearing of the pending appeal. Noting that the first hearing of the appeal - a status hearing – had been scheduled for 8th October 2025, he reasoned that it is unreasonably burdensome and wasteful to embark on a second arbitration before the appeals in this Court are concluded.

[18] It was submitted that the wasteful, disjointed and duplicative manner in which the respondent proposes to litigate the same issues across two separate adjudicating fora is time-consuming, oppressive and unduly burdensome both in terms of the financial burden and the use of resources. The applicant contended further that the newly commenced arbitration would serve little to no practical purpose if the applicant's appeal is ultimately successful, as such a result would render the second arbitration null and void and entirely wasteful. Moreover, the continuation of the second arbitration could potentially undermine and interfere with the applicant's statutory right of appeal. In those circumstances, the

applicant maintained that the simultaneous progression of the appeal and the initiation of a second arbitration is not only vexatious, but also unconscionable and oppressive.

[19] Further, it was submitted that it would be untenable to allow arbitration proceedings to be pursued before a new arbitrator when as the judge of the Commercial Court found by granting leave to appeal, the appeal has a real prospect of success. It reasoned that such arbitration proceedings, if not restrained, are clearly an interference with the jurisdiction of the Court of Appeal to effectively grant the remedies sought by the appeal, if the applicant prevails.

[20] As to what are the relevant factors governing the grant of an injunction pending appeal, the applicant noted that they are set out in **Novartis AG v Hospira UK Ltd**¹⁰ and are satisfied in the case at the appeal bar.

Respondent's Submissions

[21] The respondent made three principal arguments opposing the application. Firstly, it was submitted that there was no urgency to the application and no justification to proceed with it on an urgent basis. Secondly, the respondent argued that the application should properly have been made to the Commercial Court and thirdly, it contended that there is no merit to the application.

[22] On the subject of urgency, it was noted that the applicant in its certificate of urgency had stated that the application was urgent because of the pressing need to file a response to the notice of arbitration by 20th August 2025. It was submitted that the applicant has since filed its response in the Second Arbitration Proceedings. That notwithstanding, the applicant is attempting to get the secretariat at the BVI IAC to defer further steps in relation to the appointment of the new tribunal. The respondent argued that with the filing of the response by

¹⁰ [2014] 1 WLR 1264 at 1272 at para. [41].

the applicant, its reason for seeking urgent interim injunctive relief before the deadline for filing its response is no longer a relevant consideration and no further evidence supporting the request for urgent determination of the application has been advanced.

[23] As to whether the Second Arbitration proceedings should proceed alongside the appeal, the respondent submitted that no stay was applied for or granted by the Commercial Court to restrain the respondent from commencing new arbitration proceedings pursuant to paragraphs 746 and 747 of the judgment both of which contemplated that new arbitration proceedings might be pursued. The respondent submitted that it was therefore free to commence new arbitration proceedings.

[24] It was submitted further that the applicant was pursuing the appeal at a snail's pace in circumstances where a listing date has not been fixed and the applicant is not doing anything to expedite matters. It was said that the affidavit evidence speaks to transcripts having been requested in September 2024, yet the reality is that significantly nothing was done to press for their completion until April/May 2025, several months having elapsed. It was submitted that the applicant evidently has no interest in pushing its appeal with any vigour and at the current rate of progress any listing and production of a reserved judgment will lead to further delays of one to two years. The respondent contended further that an order granting the injunctive relief sought would result in the imposition of a blanket restriction that could last for up to two years.

[25] On the respondent's behalf, learned King's Counsel Mr. Paul Chaisty argued that almost a year has elapsed with no further progress since the filing of the notice of appeal; four and a half years have gone by since the First Arbitration Proceedings began; and the respondent has a decision in its favour and wishes to proceed with the new arbitration.

- [26] The respondent contended that the appointment of an arbitrator for the Second Arbitration Proceedings is by no means prejudicial to the applicant. It was submitted that there are serious questions as to this Court's jurisdiction or discretion concerning whether it should consider the merits of the application or grant the injunction sought, not least of which is the fact that the new arbitration is not an issue before this Court. Learned King's Counsel stated that the applicant has not established why or how this Court should be entertaining the application at all. He added that it would set an unhappy precedent if it was to be said that litigants could apply directly to a Full Court of Appeal for injunctive relief which has not been sought at first instance, when it could have been, and further ask the Court to constitute a full panel as a matter of urgency.
- [27] It was submitted that in any event the application should be dismissed on its merits. In this regard, the respondent contended that no basis for granting the injunction has been established; no prejudice justifying such a grant has been made out; and furthermore, it has a contractual right to pursue an arbitration. As to prejudice that it may suffer, the respondent contended that the application seeks a blanket ban on the new arbitration proceedings pending the appeal which is neither necessary nor appropriate. If injunctive relief is granted, this would mean that the final determination of the appeal could take up to two years resulting in a massive delay if the appeal fails. In such a case the respondent's ability to pursue the new arbitration would be impacted. On the other hand, if the appeal succeeds any steps taken in the new arbitration can be set aside and the Final Award restored with adjustments in respect of costs considerations. It was submitted that the balance of convenience favours the respondent. Moreover, Courts should stay clear of interfering in an arbitral process and the scope for any interference is limited by statute.
- [28] Learned King's Counsel argued that the application is akin to an anti-suit injunction in that the applicant is asking the Court to restrain the respondent from pursuing its contractual rights to pursue an arbitration and seek an award in its

favour. In this regard, he cited **Inzajat Technology v. Dr Hamid Najafi** for the proposition that such injunctions are granted in limited circumstances, namely where the arbitral proceedings constitute a threatened or actual breach of the applicant's right or are vexatious, oppressive or unconscionable. He stated that the applicant cannot establish either of those grounds in the present application since no legal right of the applicant is being or is likely to be infringed and the new arbitration proceedings are not abusive, vexatious or unconscionable.

DISCUSSION

- [29] The Court may, in the exercise of its equitable jurisdiction and discretion, grant interim injunctive relief to an applicant depending on the circumstances of the case, if satisfied that it is just or convenient to do so. The fount of the Court's jurisdiction to grant an injunction including interim injunctive relief is undisputed and is conferred by section 24(1) of the **Eastern Caribbean Supreme Court (Virgin Islands) Act**¹¹ which states:

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the High Court or of a judge thereof in all cases in which it appears to the Court or Judge to be just or convenient that the order should be made and any such order may be made either unconditionally or upon such terms and conditions as the court or judge thinks just."

- [30] The issue of this Court's jurisdiction to grant an anti-arbitration injunction in respect of a foreign arbitration was examined in **Sonera Holding B.V. v Cukurova Holding A.S.**¹² In that case, this Court considered the effect of several provisions of the Act including sections 3 and 6(2)¹³. Section 3(2)(b) provides:

'This Act is founded on the following principles -
(a) ...;

¹¹ Cap. 80 of the Revised Laws of the Virgin Islands, 2014.

¹² BVIHCMAP2015/0005 (delivered on 23rd June 2016).

¹³ Section 6(2) of the Act states:

'Subject to subsection (3), this Act applies to an arbitration under an arbitration agreement, whether or not the arbitration agreement is entered into in the Virgin Islands, if the place of arbitration is in the Virgin Islands.'

(b) the Court shall not interfere in the arbitration of a dispute, save as expressly provided in this Act; and ...'

[31] While acknowledging the policy imperatives in the **Act** against interference by the court in arbitrations, the Court reiterated the well-established principle articulated in **Naviera Amazonica Peruana SA v Compania Internacional De Seguros Del Peru**¹⁴ that 'every arbitral order must have a seat [that] anchors it to a particular national legal system ... [that] dictates the legal system which is ... empowered to exercise supervisory jurisdiction over the arbitration.'¹⁵ The obvious corollary, as noted by the Court, is that the court of the seat of the arbitration would of necessity be endowed with greater control and greater powers of intervention over an arbitration within its jurisdiction than one in a foreign jurisdiction. **Sonera** is authority for the principle that the Court retains the power to prevent abuse of process in the conduct of court or arbitral proceedings. It would exercise those powers of control only if necessary, and would do so judicially, not to interfere with an arbitration, but rather to restrain a party from abusing the process of the court or the arbitral tribunal or using either forum in an oppressive or unconscionable manner. It matters not whether the arbitration is domestic or foreign.

[32] As with foreign arbitration proceedings, it is settled law that the Court has jurisdiction to grant injunctive relief to restrain a party from pursuing domestic arbitration proceedings but will do so only in exceptional cases: **Minister of Finance (Inc) and another v International Petroleum Investment Co and another**. Exceptional circumstances will be made out where the applicant satisfies the relevant test. He does so by establishing that its 'legal or equitable rights have been infringed or threatened by a continuation of the arbitration, or that its continuation will be vexatious, oppressive or unconscionable, these being the principles which govern the grant of injunctions to restrain proceedings in a

¹⁴ [1988] 1 Lloyd's Rep 116 per Kerr LJ at pp. 119 – 120; and C v D [2008] Bus LR 843 per Longmore LJ at para. 117.

¹⁵ Ibid. at para. [14].

foreign court: see [Elektrim SA v Vivendi Universal SA (No 2)] [2007] 2 Lloyd's Rep 8, para 56.¹⁶

[33] As noted earlier, the applicant relies on both limbs of the test. Being mindful of the foregoing legal principles, the Court considered whether the applicant demonstrated to its satisfaction that pursuit of the Second Arbitration Proceedings is vexatious, oppressive or unconscionable. Of relevance is that there are two pending appeals before this Court in relation to the First Arbitration Proceedings. It is common ground between the parties that the issues to be determined on appeal are similar to some of the issues that will arise in the Second Arbitration Proceedings. These include the construction and meaning of the Licence Agreement and liability (including appropriateness of award). If the Second Arbitration Proceedings advance at the same time as the appeals those issues will be considered on parallel tracks in circumstances where the parties have agreed to arbitration of any disputes in accordance with the provisions of the Act, which contemplates and incorporates an appeal process at the election of a party.

[34] By executing the arbitration agreement, the parties have agreed that the BVI is the seat of the arbitration and that the Act is applicable. They have thereby submitted themselves willingly to all stages of the arbitration process including any appeals that may be pursued under the provisions of the Act including the two pending appeals. There can be no dispute that the appeal process provided for in paragraph 5(9) of Schedule 2 to the Act is an integral part of the First Arbitration Proceedings to which the parties have bound themselves by the arbitration agreement. Self-evidently, the First Arbitration Proceedings would be concluded only when the pending appeals are finally determined.

¹⁶ Ibid. at para. 67.

[35] It follows that by attempting to pursue the Second Arbitration Proceedings while the first is in train, the respondent has taken action which would engage the parties in simultaneous, parallel judicial inquiries about identical and similar factual and legal issues. The natural consequences involve duplication of efforts, expenditure and resources contrary to the overriding objective of the **Civil Procedure Rules (Revised Edition) 2023 ('CPR')**. More fundamentally, such a course is manifestly abusive of the process of the court and in all of the circumstances is unconscionable. For these reasons, the Court was satisfied that in all the circumstances of this particular case, it was just and proper to grant the interim injunctive relief conditioned on the provision of an undertaking in damages sought by the applicant as this was the only appropriate recourse to protect its process from being undermined. The Court is satisfied that any prejudice occasioned to the respondent can be addressed by issuing appropriate directions to expedite the hearing of the appeals and appropriate costs orders.

[36] I am constrained to make a further observation. Orders restraining a party from pursuing arbitral proceedings have been loosely referred to as 'anti-suit arbitration injunctions' a term which featured in this case. Commenting on that nomenclature, the court in **Turner v Grovit**¹⁷ explained that it gives the impression that the injunction is directed at the tribunal and seeks to bind it from acting when in reality this is not the case. As noted by this Court in **Sonera**, Lord Hobhouse of Woodborough dispelled that notion by remarking:

“...None of this is correct. When an English Court [like the BVI Court] makes a restraining order, it is making an order which is addressed only to a party which is before it. The order is not directed against the foreign court [tribunal]: *Lord Goff of Chieveley, Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871, 892.”¹⁸

It follows that the interim injunction granted in this case is not intended to stymie the arbitral tribunal engaged in the Second Arbitration Proceedings. Rather, the

¹⁷ [2002] 1 WLR 107 at para. 23.

¹⁸ At para. [34] of *Sonera*.

intention is to restrain the respondent from pursuing a course that would amount to an abuse of this Court's process in relation to the two pending appeals.

Jurisdiction of Single Judge – Interim Anti-Arbitration Injunction

- [37] The Court noted that the question about the jurisdiction of a single judge to grant an interim anti-arbitration injunction arose as a collateral issue. It was not necessary for the Court to make a determination on that matter in arriving at its decision with respect to the application for interim injunctive relief. Furthermore, determination of the collateral issue would have no bearing on the pending appeals. The Court concluded that it would refrain from deciding that question as it was academic.

Costs

- [38] The CPR empowers the Court to award costs in respect of proceedings conducted before it. The general rule as contained in rule 64.6(1) is that 'where the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.' This stipulation is applicable in respect of applications other than procedural ones: CPR rule 65.12. The applicant being the successful party is entitled to recover its costs which are to be assessed in accordance with rule 65.12.

[39] The Court is grateful to learned King's Counsel on both sides for their very helpful and comprehensive written and oral submissions.

I concur.

Mr. Reginald Armour
Justice of Appeal (Ag.)

I concur.

Mde. Gertel Thom
Justice of Appeal (Ag.)

By The Court

Chief Registrar