

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
TERRITORY OF THE VIRGIN ISLANDS
MONDAY, 16TH JUNE – FRIDAY, 20TH JUNE 2025

JUDGMENTS

Case Name:

[1] Mark Byers
[2] Matthew Richardson
(as Joint Liquidators of the below-named
company)
[3] Pioneer Freight Futures Company Limited
(In Liquidation)

v

Chen Ningning (also known as Diana Chen)

[BVIHCMAP2024/0009]
(Territory of the Virgin Islands)

Date:

Friday, 20th June 2025

**Coram for
delivery:**

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]
The Hon. Mr. Darshan Ramdhani, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Tom Smith KC

Respondent: Mr. Faisal Saifee

Issues:

Commercial appeal – Fiduciary duty of directors - The rule in West Mercia Safetywear Ltd (in liq) v Dodd and another - Whether the learned judge erred in concluding that Pioneer Freight Futures Ltd was not entitled to an order for payment by the respondent for

breach of the rule in West Mercia - Whether the learned judge was correct in concluding that the question of whether the respondent had obtained a reputational benefit from the Zenato Payments was foreclosed by the decision of the Privy Council

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against the decision of the learned trial judge is allowed.**
- 2. The orders made at paragraphs 78-81 of the written judgment are set aside.**
- 3. The respondent is ordered to pay the sum of US\$13m with interest at a rate of 5% per annum (from 29th November 2009 until payment) to the appellants.**
- 4. In the distribution of the assets of PFF to the general body of creditors, the debt due to PFF is to be taken as notionally increased by US\$13m to what it would have been if the Zenato Payments had not been made by the respondent in breach of the rule in West Mercia, and then any dividend attributable to the extra US\$13m is to be added back to the debt of PFF is to be recouped to the respondent rather than being paid to PFF.**
- 5. The appellants shall have their costs in the appeal and in the court below to be paid by the respondent to be assessed if not agreed within 21 days of today's date.**

Reason:

- 1. Once a company is insolvent or bordering on insolvency, the interests of the company for the purposes of the director's fiduciary duty are extended to include the interests of the company's creditors as a whole. This further extension is a recognition that for some purposes, the interests of the company are to be regarded as including the interests of a third party that is distinct from the company as a corporate entity. Thus, where the rule of West Mercia applies, the interests of the general body of creditors are to be regarded as the**

same as the interests in the company. In essence, where the rule in *West Mercia* applies, the principle of separate legal personality serves a new function, that is, to protect the interests of creditors entitled to the protection that the rule provides.

West Mercia Safetywear Ltd (in liq) v Dodd and another [1988] BCLC 250 applied; *Saloman v A Saloman & Co Ltd* [1897] AC 22 applied.

2. The remedy granted in *West Mercia* was based on the breach of the rule. Although the action of the director in making the payment for his own benefit which amounted to what was called a “blatant misfeasance” loomed large in the decision of the Court of Appeal in *West Mercia*, it cannot be said that when properly read in context that that feature was the sole basis or an important factor that informed the reasoning of the Court of Appeal in respect of the remedy granted. The decision therefore accepts that a repayment of any sums paid in breach of the rule in *West Mercia* is an appropriate form of relief. For the purposes of determining the loss caused by a breach of the rule in *West Mercia*, any loss to the general body of creditors must be equated with that of the company. If this were not the case, directors would act with impunity in breach of the rule comforted in the knowledge that once the transaction is balance sheet neutral, the company would suffer no financial loss and consequently the directors will not be liable at all for any such breach.

West Mercia Safetywear Ltd (in liq) v Dodd and another [1988] BCLC 250 applied; *Bilta (UK) Ltd (in liquidation) and others v Nazir and others (No 2)* [2016] AC 1 considered.

3. The learned trial judge held that since the *Zenato Payments* were balance sheet neutral, this meant that PFF did not suffer a net loss

and that consequently, there was nothing for which PFF needs to be compensated by a payment from the respondent. Had the learned trial judge accepted that the loss to the body of creditors is to be regarded as a loss to the company in the context of a breach of the rule in West Mercia, he would not have arrived at this conclusion. In doing so, the learned trial judge erred in principle. Indeed, any financial benefit to the respondent is not a relevant consideration in determining whether the company suffered any loss because of her established breach of the rule in West Mercia.

AIB Group (UK) plc v Mark Redler & Co Solicitors [2015] AC 1503 considered; BTI 2014 LLC v Sequana SA and others [2024] AC 211 applied; Stanford International Bank Ltd (in liquidation) v HSBC Bank plc [2023] AC 761 distinguished.

4. Having considered whether an equitable remedy along the lines crafted in West Mercia should be applied, the learned trial judge answered in the negative. In doing so, the learned judge was also wrong in principle as the rule in West Mercia was directly engaged in the earlier proceedings in which the Privy Council had found the respondent had breached the rule. Further, the decision in West Mercia was approved in Sequana. It was therefore not open to the learned trial judge to reject the remedial approach adopted by the Court of Appeal in West Mercia. In rejecting that equitable remedy, the learned trial judge noted that the director in West Mercia had indirectly obtained a benefit from the improper preference paid. The issue of a benefit is not a feature of the rule of West Mercia and the learned judge was accordingly wrong to treat it as a precondition for the application of the rule.

West Mercia Safetywear Ltd (in liq) v Dodd and another [1988] BCLC 250 applied; BTI 2014 LLC v Sequana SA and others [2024] AC 211 applied.

5. The learned judge was wrong to dismiss the Quantum Application on the basis that the only eventual basis for making a payment order was what PFF needed to be compensated for a net loss incurred because of the Zenato Payments and since there was no such net loss to PFF, no compensation fell due. In making the Zenato Payments, the company suffered a pecuniary loss equivalent to the financial loss suffered by the general body of creditors.

APPLICATIONS/APPEALS

Case Name:

**Ng Min Hong
v
Soemarli Lie**

**[BVIHCMAP2022/0012]
(Territory of the Virgin Islands)**

Date:

Monday 16th - Tuesday 17th June 2025

Before:

**The Hon. Mde. Vicki-Ann Ellis, Justice of Appeal
The Hon. Mde. Ingrid Mangatal, Justice of Appeal
[Ag.]
The Hon. Mr. Darshan Ramdhani, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

**Mr. Alain Choo-Choy KC with him Mr. James Noble
and Ms. Kate Lan**

Respondent:

**Mr. Matthew Hardwick KC with Mr. Richard Evans and
Dr. Alecia Johns**

Issues:

Commercial appeal - Appeal against learned trial judge's order that the appellant should buy out the respondent's shareholding in SOFL - Appellate interference with findings of fact of trial judge - Quasi partnership - Whether the judge erred and/or mis-applied established legal principles concerning the types of conduct that may fall within Section 184I and the prerequisites for a relationship of quasi-partnership - Whether the learned trial judge ought to have rejected the Quasi-Partnership Allegation - Whether the learned trial judge erred in finding that Mr. Ng continued to have a right in equity to be consulted and to have access to all records of the Business - Whether the judge ought to have held that Mr. Lie's Information Complaint was unsuitable as a ground of unfair prejudice - Non-payment of dividends - Whether the judge erred in treating the decision of the board of directors and/or or shareholders of PT PDP not recommend or pay a dividend as amounting to conduct of the affairs of SOFL - Whether the judge erred in holding that Mr. Ng deliberately caused dividends to stop being paid by PT PDP in favour of SOFL - Whether the judge was wrong in holding that SOFL's shareholders would automatically receive dividends - Whether the judge erred in finding that SOFL's failure to pay dividends was unfair and prejudicial - Whether the judge erred in holding that the 2017 Disposition was not a genuine repatriation of Mr. Ng's economic interest in PT PDP to Grahaidea - Whether the judge erred in finding that the 2017 Disposition was an egregious and unlawful appropriation of Mr. Lie's interest in SOFL - Whether the judge wrongly failed to appreciate that the unfairness and prejudice to Mr. Lie was stemmed from Mr. Ng's failure to transfer his shareholding - Whether the learned judge erred in finding that the effect of the rights issue was unfairly prejudicial towards Mr. Lie because the very purpose of the transaction has been to shift value in the Business from Mr. Lie to Mr. Ng by means of his manoeuvre - Whether the judge erred in finding that the 2018 Rights Issue was not a preparatory step towards an IPO of PT PDP - Whether the learned judge wrongly treated the 2018 Rights Issue as unfairly prejudicial conduct as against Mr. Lie

Issues: Application for leave to appeal - Application for a stay
- Voluntary absence of applicant from proceedings

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED:

1. The application for leave to appeal the costs orders of Hon. Justice Wallbank dated 24th January 2024 and the order dismissing the 'Party Adding Application' is refused.
2. The application for stay of execution of the said orders falls away and is dismissed.
3. No order is made as to costs.

Reason:

Before the Court was a notice of application filed by the applicant on 8th February 2024 for: a.) leave to appeal against orders made by Wallbank J dated 24th January 2024, directing the applicant to pay the costs occasioned by the 'Party Adding Application', including, but not limited to the costs of the hearing of 24th January 2024 inclusive of the costs of Michael Fay KC in the sum of USD\$2875.00 payable on 8th February 2024, the costs of Arabella Di Iorio, Agon Litigation and Renova Industries Ltd. to be assessed if not agreed within 14 days; and dismissing the 'Party Adding Application'; and b.) an order to stay the execution of the costs and 'Party Adding Application' order until determination of the intended appeal.

The Court noted the notice of opposition filed by the first respondent on 19th February 2025 against the application for leave to appeal and the stay application, the notice of objection filed on 27th February 2025 by the fifth respondent to the application for a stay, the notice of objection filed on 27th February 2025 by the second, third and fourth respondents to the application for a stay.

The Court noted the order of a single judge dated 18th March 2025, by which he directed that the application for leave to appeal and for stay are to be set down for

hearing before the Full Court on a date to be fixed by the Chief Registrar. The Court noted further that on application number BVIHCMAP2024/0004 being called for hearing, the applicant being present on the Zoom platform voluntarily and intentionally elected not to participate in the proceedings and so represented to the panel on the ground that he objected to the Honourable Justice of Appeal Thom [Ag.] being a member of the panel, he having forwarded complaints of judicial misconduct against her to the Honourable Chief Justice and having represented to the learned Chief Registrar that he would not participate in the hearing unless certain preconditions are met, including that he be assured by the court office prior to the hearing of the application, that no one on the panel of Justices of Appeal is subject to allegations of judicial misconduct raised by him, or his associates.

The Court noted that the applicant refrained from making any oral or written application for the Honourable Justice of Appeal Thom [Ag.] or members of the constituted panel to recuse themselves from the hearing and he having not made any assertions of bias as against Justice of Appeal Thom [Ag.], the Court was accordingly of the opinion that it may proceed to hear and determine the application.

Upon considering that pursuant to rule 62.2 (5) and (8) of the Civil Procedure Rules 2023 governing applications for leave to appeal, and in particular, that applications for leave to appeal to the Court may be considered by the Full Court, and that leave to appeal may be given only where: a.) the Court considers that the appeal would have a realistic prospect of success, or b.) that there is some other compelling reason why the appeal should be heard;

Upon reading the grounds of appeal set out in the draft notice of appeal, and noting representations by Mr. Paul Griffiths that he was joined to this application, although he was not a party to the proceedings in the court below;

And the Court being of the view that the applicant failed to meet the threshold for the grant of leave to appeal in that the applicant did not have a realistic

prospect of success on any of the grounds of appeal and that his application for leave to appeal should therefore be refused, and in the circumstances, the application for a stay is rendered otiose, it was ordered that the application for leave to appeal the costs orders of Wallbank J dated 24th January 2024 and the order dismissing the Party Adding Application' is refused and the application for a stay of execution of the said orders fell away and was dismissed.

As it relates to costs, the Court noted that the application for a stay of execution only became relevant to the extent that leave to appeal was granted. The Court remained mindful that the principles guiding the Court when considering an application for a stay of execution are well established and are well known to the parties and required no extensive research by the parties or their legal practitioners. The Court was mindful that Mr. Fay KC made written submissions but noted that there was nothing in the said submissions which led to the view that in all the circumstances of the case, that costs should be awarded to any of the respondents. The Court considered that the justice of the case, taking into account the criteria set out under rule 1.2 of the CPR with respect to the matters to be considered when exercising the Court's discretion and taking into account the overriding objective, would be best served by making no order as to costs.

Case Name:

- [1] Mary Elizabeth Smith Vanterpool
- [2] Wilbert Owen Smith
- [3] Eleanor Melvina Smith
- [4] Elvia Eugenie Merryman
- [5] Teddy Louis Smith
- [6] Creighton Antonio Smith
- [7] Daniel Marvin Smith
- [8] Dave Brubeck Smith
- [9] Shaina Mary Ann Smith
- [10] Oraal Dwayne Smith
- [11] Doran Martinez Smith

v
Turquoise Waters Limited

[BVIHCVAP2024/0004]
(Territory of the Virgin Islands)

Date: Monday, 16th June 2025

Before: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Michael J Fay KC

Respondent: No appearance

Issues: Interlocutory Appeal - Proof of service of the notice of appeal on the respondents - Removal of the Attorney General as respondent to the appeal - Evidence confirming the restoration of Turquoise Waters Limited to the Register of Companies

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. Counsel for the appellants in accordance with his oral undertaking to the court is directed to file by 24th June 2025 (a) an affidavit of service of the notice of appeal on the respondents; and (b) evidence of the court order granting restoration of Turquoise Waters Limited to the register and the certificate of restoration.
2. The Attorney General is at liberty to file written submissions within 21 days of service of the notice of appeal.
3. The Registrar of the High Court will serve this order on the parties on or before 24th June 2025 and provide proof of service to the Chief Registrar within 7 days of service.

4. The appeal is adjourned to a date to be fixed by the Chief Registrar.

Reason:

On the notice of appeal filed on 27th November 2024 against the decision of the learned judge delivered on 8th February 2024 dismissing the applications filed by the appellants in the High Court on 18th September 2023 and 20th December 2023, coming on for hearing;

And upon noting that the order dated 19th November 2024 granting leave to appeal named the respondents to the appeal as Turquoise Waters Limited and the Attorney General and directed that the notice of appeal be filed and served on the respondents within 21 days;

And upon the Court noting that there was no proof of service of the notice of appeal by way of affidavit on the respondents, Turquoise Waters Limited and the Attorney General; and noting further that no order has been made removing the Attorney General as respondent to the appeal and no evidence has been presented confirming the restoration of Turquoise Waters Limited to the register of companies;

And noting the oral undertaking by counsel for the appellants to file within 7 days of today's date, the affidavit of service of the notice of appeal and evidence of restoration of Turquoise Waters Limited to the register,;

And the Court noting the absence of submissions from the Attorney General and being of the view that the Court can benefit from submissions of the Attorney General either as a party or amicus curiae; the Court was satisfied in all the circumstances that it may not proceed with a hearing of the appeal until these matters were addressed.

Case Name

**Andrey Titarenko
v**

[1] Viktor Vekselberg
[2] Renova Industries Ltd
[3] Lamesa Holdings Sa
[4] Zapanco Limited
[5] Integrated Systems Limited
(a company incorporated under the laws of
Belize)
[6] Wedgwood Management Limited
[7] Odvin Financial Inc
[8] Starlex Company Limited
[9] Sunglet International Inc.
[10] Integrated Energy Systems Limited
(a company incorporated under the laws of
Cyprus)

[BVIHCMAP2022/0036]
(Territory of the Virgin Islands)

Date: Monday, 16th June 2025

Before: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mde. Cadie St. Rose Albertini, Justice of
Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondents: Ms. Arabella Di Iorio

Issues: Commercial appeal - Dismissal of appeal for want of
prosecution

Type of Order: Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed for want of
prosecution.

2. The appellant shall pay to the respondents costs to be assessed by a judge of the Commercial Court if not agreed within 21 days.

Reason:

This was an appeal filed by the appellant on 18th August 2022 against an order made by Wallbank J dated 6th April 2022 dismissing the appellant's 'deemed admissions' application filed on 17th March 2022 and declaring that the application was without merit.

The Court noted that the appellant having been granted leave to appeal by order of a single judge dated 26th July 2022 and that upon BVIHCMAP2022/0036 being called for hearing, the appellant having been present earlier on the zoom platform in another matter, elected to voluntarily and intentionally not participate in the proceedings in this matter and absented himself from the hearing during the proceedings in accordance with his earlier oral and written indication to the Court, the written indication being captured in his case management conference form in which he stipulated certain preconditions to his participation in the hearing today.

In the circumstances, the Court determined that the appeal ought to be dismissed for want of prosecution having been satisfied that the appellant by his conduct had evinced and actively demonstrated a wilful failure to prosecute the appeal.

Case Name:

MBS Software Solutions Limited

v

[1] Matthew Paget

[2] Reid Zuplo

[BVIHCMAP2024/0012]

(Territory of the Virgin Islands)

Date:

Monday, 16th June 2025

Before:

The Hon. Mde. Paula Gilford, Justice of Appeal [Ag.]

**The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal [Ag.]**

Appearances:

Appellant: Mr. Sharif Shivji KC with Mr. Daniel Kessler, Mr. Jonathan Addo, Mr. Andre McKenzie, and Ms. Victoria Lissack

Respondents: Mr. Thomas Munby KC with Mr. Ryan Turner, Mr. Andrew Willins KC, and Ms. Tamara Cameron

Issues:

Interlocutory appeal - Appeal against judge's order setting aside an ex parte order adding the respondents as parties and for service of an application for a non party costs order outside of the jurisdiction on the appellants - Whether service was valid - Whether the judge erred in construing the ex parte order as not providing permission to serve the claim form outside of the jurisdiction - Whether jurisdiction was properly established - Non party cost orders - Whether the judge was wrong to depart from the case of Halliwell Assets Inc v Hornbeam Corporation and preferring to rely on Convoy Collateral Ltd v Broad Idea International Ltd and anr - Whether judge erred in finding that the Civil Procedure Rules 2000 (the "Old Rules") applied - Part 7 of the Old Rules - Whether the learned judge's construction and approach to the Civil Procedure Rules (Revised Edition) 2023 (the "New Rules") was wrong in law - Rule 75.3 of the New Rules - Whether the judge erred in giving a wide interpretation to the words "trial date" - Whether by adjourning the hearing of the non party costs order application, the judge effectively adjourned the "trial date" and therefore the New Rules applied

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**[1]Lau Man Sang, James
[2]Lung Hung Cheuk
[3]Cheung Wing Sum, Albert
[4]Ngai Hin Kwan, Albert
[5]Yeung Yiu Chong
[6]Zhang Guo Wei**

v

**[1]King Bun Limited
[2]Kency Ltd.
[3]Kar Kwong Development Limited
(trading as Kai Kwong Trading
Company)
[4]KHI Capital Limited
[5]Kenttrue Company Limited
[6]Hui Pak Kong
(suing in the name and on behalf of
themselves and all other
shareholders in Vanway
International Group Limited except
the first and second defendants)
[7]Chau Cheuk Wah, Angus
[8]Vanway International Group
Limited**

**[BVIHCMAP2023/0031]
(Territory of the Virgin Islands)**

Date:

Tuesday, 17th June 2025

Before:

**The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal [Ag.]
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]**

Appearances:

Appellants:

Mr. David Quest KC

Respondents:

Mr. Jern-Fei Ng KC with him Mr. Jerry Samuel and Mr. James Bailey

Issues:

Commercial Appeal - Quantum Appeal - Adjournment

Type of order:

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

The matter BVIHCMAP2023/0031 is adjourned to a date to be fixed by the Chief Registrar as a matter of priority, if necessary, pending the delivery of the judgment in BVIHCMAP2025/003 involving the identical parties.

Reason:

Upon the Court having regard to the exchange between learned counsel and the bench and upon hearing the appeal in BVIHCMAP2025/0003 (the “Set Aside Appeal”) and upon judgment being reserved, the Court adopted the position that it would not go on to deal with the substantive appeal, that is, the appeal in BVIHCMAP2023/0031 (the “Quantum Appeal”) because depending on the outcome in the Set Aside Appeal, particularly if the Set Aside Appeal is allowed, this would obviate the necessity to hear the Quantum Appeal. However, the Court, being cognisant that the Quantum Appeal had been prolonged for some time, ordered that the hearing of the said appeal should be listed as a matter of priority, if necessary, consequent upon the outcome of the appeal in BVIHCMAP2025/0003.

Case Name:

[1] Lau Man Sang, James

[2] Lung Hung Cheuk
[3] Cheung Wing Sum, Albert
[4] Ngai Hin Kwan, Albert
[5] Yeung Yiu Chong
[6] Zhang Guo Wei

v

[1] King Bun Limited
[2] Kency Ltd.
[3] Kar Kwong Development
Limited (trading as Kai Kwong
Trading Company)
[4] KHI Capital Limited
[5] Kentrue Company Limited
[6] Hui Pak Kong
(suing in the name and on behalf
of themselves and all other
shareholders in Vanway
International Group Limited
except the first and second
defendants)
[7] Chau Cheuk Wah, Angus
[8] Vanway International Group
Limited

[BVIHCMAP2025/0003]
(Territory of the Virgin Islands)

Date: Tuesday, 17th June 2025

Before: The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal [Ag.]
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. David Quest KC

Respondents: Mr. Jern-Fei Ng KC, with him Mr. Jerry Samuel and Mr. James Bailey

Issues: Interlocutory appeal - Order dismissing application to set aside and ordering that the appellants and 7th respondent be jointly and severally liable to pay equitable compensation and pre-judgment interest on the equitable compensation - Whether the learned judge erred in law by applying an unduly rigorous standard in determining whether the appellants had good reason for their non-attendance at the quantum trial - Whether the learned judge ought to have followed Article 6 of the European Convention on Human Rights (right to a fair hearing) - Whether the learned judge erred in concluding that there was no evidence before him to conclude that Mr. Lock had not received the listing notice - Whether the judge erred by misunderstanding the appellants' explanation for non-attendance as merely Mr. Lock being busy and inattentive - Whether the judge erred in finding Mr. Lock was litigation manager and thus could not rely on Mr. Kendall for deadlines - Whether the judge erred in finding the appellants were irresponsible in relying on Mr. Lock, without considering whether they knew of his limited availability and lack of diligence - Whether the judge erred by failing to consider the appellants' argument that Kendall breached CPR 63.6 by not personally serving notice of their application or the court's order to come off the record

Type of order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason: N/A

Case Name:

[1]Incredible Power Limited

[2]Wong Kie Yik

[3]Wong Kie Chie

[4]Rayley Company Limited

[5]Esben Finance Limited

v

Kathryn Ma Wai Fong

[BVIHCMAP2022/0014]

[BVIHCMAP2022/0015]

[BVIHCMAP2022/0016]

(Territory of the Virgin Islands)

Date:

Tuesday, 17th June 2025

Before:

The Hon. Mde. Esco L. Henry, Justice of Appeal

The Hon. Mr. Reginald T.A Armour, Justice of Appeal

[Ag.]

The Hon. Mde. Cadie St. Rose Albertini, Justice of

Appeal [Ag.]

Appearances:

Applicant:

**Mr. Orlando Fraser, KC (for Kathryn Ma Wai Fong) with
Mr. Herman Boeddinghaus KC, Ms. Eleanor Holland
and Ms. Joni Khoo**

Respondents:

**Mr. Oliver Clifton and Ms. Colleen Farrington for the
first and fifth respondents**

**Mr. David Alexander KC with him Mr. Scott Tolliss for
the second and third respondents**

**Mr. Andrew Westwood KC and Ms. Fay O'Halloran for
the fourth respondent**

Issues:

**Motion for conditional leave to appeal to His Majesty
in Council - Section 3(1)(a) of the Virgin Islands
Appeals to Privy Council Order 1967 - Appeal as of
right**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The applicant is granted conditional leave to appeal to His Majesty in Council against the judgment and orders of the Court of Appeal dated 15th January 2025.**
- 2. The leave to appeal is conditioned on the applicant lodging with the Registrar of the High Court within 90 days of the date of this order, £500 sterling as security for the prosecution of each appeal to His Majesty in Council and the payment of all such costs as may become payable by them in the event of the applicant not obtaining an order granting final leave to appeal or the appeal being dismissed for non-prosecution or the Judicial Committee ordering the applicant to pay the cost of the appeal as the case may be.**
- 3. The applicant shall within 90 days from today's date, take all necessary steps for the purpose of procuring the preparation of the records, the settling of such records with solicitors for the respondents of this application and the certification of the record by the Chief Registrar of the Court of Appeal and shall prepare the record of the appeal in accordance with rules 18 to 20 of the Judicial Committee Appellate Jurisdiction Rules 2009 and Practice Directions 4.2.1, 4.3.2 and 4.3.5 and 5; the same to be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.**
- 4. The applicant shall make an application for final leave to appeal to His Majesty in Council supported by the certificate of the Registrar of the High Court, that security for costs for the prosecution of the appeal ordered herein at paragraph 2, has been given to the satisfaction of the Registrar within the time prescribed by this order.**
- 5. The three appeals are consolidated for the purposes of the appeals to His Majesty in Council.**

6. The Court of Appeal's order for a retrial is stayed pending the determinations of the appeal to His Majesty in Council.
7. The costs of and occasioned by the motion for leave to appeal to His Majesty in Council shall be costs in the appeal to His Majesty in Council.

Reason:

Before the Court was a Notice of Motion filed by the applicant on 5th February 2025 seeking conditional leave pursuant to section 3(1) of the Virgin Islands Appeals to Privy Council Order 1967 ("the 1967 Order"), to appeal to His Majesty in Council as of right against the judgment and orders of this Court made on 15th January 2025; the Court order setting aside the judgment and consequential orders of the learned trial judge in the consolidated appeals, numbers 14, 15, and 16 of 2022. The motion was accompanied by the first affidavit of Khoo Shufen Joni filed on 5th February 2025. The respondents did not object to the grant of the application for conditional leave to appeal to His Majesty in Council.

The Court noted that the Motion arose from three claims initiated in the High Court against the respondents by the applicant, Kathryn Ma Wai Fong as executrix of the estate of her late husband and derivatively on behalf of the fourth respondent Rayley Company Limited, alleging among other things misappropriation of funds belonging to Rayley, that on 18th March 2021 judgment was entered against the respondents by the learned trial judge except in relation to a claim in conspiracy and that by further order on 11th November 2021, the learned judge ordered the respondents to make certain payments to the applicant.

By notices of appeal filed on 3rd March 2022, the respondents appealed against the decision of Wallbank J outlined in the 18th March 2021 judgment and order and the 11th November 2021 order. The Court of Appeal rendered its decision on 15th January 2025 setting aside the judgment and consequential orders. It was against that determination of the Court

of Appeal that the applicant sought conditional leave to appeal to His Majesty in Council.

The Court read and considered the written and oral submissions made by the applicant and the second and third respondents, the certificate of result of appeal, the supporting affidavit and other supporting documentation as well as the Notice of Motion for leave to appeal to His Majesty in Council and was satisfied that in the circumstances of this case, the judgment and orders against which the applicant sought conditional leave to appeal are final by virtue of the test laid down in *Inderjit Kaur Chhina v Muhammad Nazir Muhammad Ismail and another* [2024] UKPC 10. Further, the Court was satisfied that the intended appeal met the monetary threshold specified in the Virgin Islands Constitution Order in relation to appeals as of right, and that pursuant to section 3(1)(a) of the 1967 Order, the applicant was entitled as of right to obtain leave to appeal to His Majesty in Council against the judgment and orders in the consolidated appeals.

The Court was also of the view that it was appropriate to make an order pursuant to section 11 of the 1967 Order consolidating the appeals and directing that the order granting conditional leave to appeal in the consolidated appeals be effected by a single order of this Court.

It was therefore ordered that the applicant be granted conditional leave to appeal to His Majesty in Council against the judgment and orders of the Court of Appeal dated 15th January 2025 with such leave being conditioned on the applicant lodging with the Registrar of the High Court within 90 days of the date of this order, £500 - sterling as security for the prosecution of each appeal to His Majesty in Council and the payment of all such costs as may become payable by them in the event of the applicant not obtaining an order granting final leave to appeal, or the appeal being dismissed for non-prosecution or the Judicial Committee ordering the applicants to pay the cost of the appeal as the case may be.

Case Name:

[1]Incredible Power Limited

**[2]Wong Kie Yik
[3]Wong Kie Chie
[4]Rayley Company Limited
[5]Esben Finance Limited**

v

Kathryn Ma Wai Fong

**[BVIHCMAP2022/0014]
[BVIHCMAP2022/0015]
[BVIHCMAP2022/0016]
(Territory of the Virgin Islands)**

Date: Tuesday, 17th June 2025

Before: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Reginald T.A Armour, Justice of Appeal
[Ag.]
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Orlando Fraser, KC (for Kathryn Ma Wai Fong) with
Mr. Herman Boeddinghaus KC, Ms. Eleanor Holland
and Ms. Joni Khoo

Respondents: Mr. Oliver Clifton and Ms. Colleen Farrington for the
first and fifth respondents
Mr. David Alexander KC with him Mr. Scott Tolliss for
the second and third respondents
Mr. Andrew Westwood KC and Ms. Fay O'Halloran for
the fourth respondent

Issues: Application for clarification of the scope of paragraph
2 of the Court of Appeal's Order dated 15th January
2025

Application for a stay of execution of paragraphs 2, 3
and 4 of the Court of Appeal's Order dated 15th
January 2025 - Principles for the grant of a stay

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED AND DECLARED THAT:

- 1. The Court sees no need to and therefore declines to clarify paragraph 2 of the order of the Court of Appeal dated 15th January 2025.**
- 2. The application for a stay of execution of paragraph 2 of the court order, transfer of the Judgment Sums by Rayley, the Rayley Indemnity Order or staying the payment of the costs order made by the Court of Appeal on 15th January 2025 is refused.**
- 3. The applicant shall pay the costs of the clarification application to the respondents to be assessed by the Chief Registrar, if not agreed within 21 days hereof.**

Reason:

Before the Court was the Notice of Application filed by the applicant on 23rd January 2025 (hereafter the “January 2025 application”) pursuant to Rules 1.1, 26.1 and 62.20 of the Civil Procedure Rules Revised Edition 2023 and/or the court's inherent jurisdiction for clarification of this Court's order dated 15th January 2025 (or “the Court Order”), that the judgment of the learned trial judge be set aside and seeking specifically that the status quo be maintained pending any appeal or further clarification or further order pending a retrial; and that, until determination of any further application concerning certain sums of money paid by the fourth respondent's solicitors, Appleby's pursuant to paragraphs 4 and 5 of an order made by Wallbank J dated 18th March 2021 and/or paragraphs 1, 4, and or 7(a) and 10 of an order made by Wallbank J dated 11th November 2021, that Appleby's shall not transfer those funds from their bank accounts in the British Virgin Islands and Cayman Islands, respectively. The 18th March 2021 and 11th November 2021 orders were made at the end of the trials of three claims in the High Court instituted against the respondents by the applicant as administratrix of her late husband's estate and derivatively, on behalf of the fourth respondent, Rayley Company Limited which claims were the

subject of appeals determined by the judgment and orders of the Court of Appeal dated 15th January 2025.

The sums of money paid to Appleby's account pursuant to the March 2021 and November 2021 Orders were said to be a) AU\$10,661,589.30 plus interest at 5% per annum pursuant to Section 7 of the Judgments Act 1907 (the "Judgments Act"); b) US\$540,314.65 plus interest at 5% per annum pursuant to Section 7 of the Judgments Act; and c) SG\$1,495,385.16 plus interest at 5% per annum pursuant to Section 7 of the Judgments Act; referred to collectively as the 'Rayley Stakeholder Funds' which were ordered to be paid to Appleby's respectively in the BVI (as to the US\$ denominated payments) and in the Cayman Islands (as to the Australian and Singapore currency denominated payments) pending further order of the Commercial Court.

The Application was supported by the affidavit of Amelia Tan with exhibits filed on 31st January 2025 and an affidavit of Khoo Shufen Joni filed on 13th February 2025. The applicant also sought costs in relation to the January 2025 application.

The other application the Court had before it for consideration and determination related to aspects of a Notice of Motion filed by the applicant on 5th February 2025, the first limb of which sought conditional leave to appeal to His Majesty in Council and was disposed of earlier at the hearing. The second limb of that Motion sought an order clarifying which 'consequential orders' had been set aside by this Court by the judgments and orders dated 15th January 2025 setting aside the judgment and consequential orders of the learned trial judge in the consolidated civil appeals numbers 14, 15, and 16 of 2022. The third limb of the Motion sought a stay of execution of paragraphs 2, 3 and 4 of the Court Order pending the outcome of the applicant's intended appeal to His Majesty in Council. It was accompanied by the first affidavit of Khoo Shufen Joni filed on 5th February 2025.

The Court noted that there was considerable overlap between the January 2025 application, and the second and third limbs of the Notice of Motion filed on 5th February 2025. They were therefore heard, considered and determined together.

The Court noted that paragraphs 2, 3, and 4 of the Court Order, as outlined in the Certificate of Result of Appeal state:

- ‘2. The judgment and consequential orders of the learned trial judge are set aside.**
- 3. The matter is remitted to the Commercial Court for retrial before another judge.**
- 4. The appellants are entitled to their costs on the appeal to be assessed by a judge of the Commercial Division within 21 days hereof if not agreed.’**

As a matter of record, earlier in the hearing the Court disposed of the application for stay in respect of paragraph 3 of the Court Order. It was therefore not necessary to revisit that aspect of the application at this juncture.

The applicant submitted, essentially that: ‘there is some real uncertainty about the scope of the Court Order, which she asks the Court of Appeal to clarify, namely as to: which “consequential orders” have been set aside; and the effect of setting aside those orders, in particular (insofar as the relevant orders have been set aside):

- 1. If, the Court of Appeal considers that Rayley is at liberty to transfer away the Rayley Stakeholder Funds, a stay in respect of those funds on the further basis that it would reflect the balance of potential harm to the parties to protect the status quo and would remove the risk that a successful appeal is rendered**

nugatory if those funds are dissipated at this stage; and

2. a stay of the order that the applicant pays the respondents' costs of the appeal before the Court of Appeal, on the further basis that the balance of harm test favours leaving the costs order in abeyance pending a decision on the appeal.
3. Alternatively, the applicant submitted that she sought security for the due performance of such order as the Privy Council may make, in the form of an order that the Rayley Stakeholder Funds continue to be held by Appleby's on behalf of Rayley pending the outcome of her appeal;

The Court noted that in the Notice of Motion and the Application, the applicant made no application for security, and raised this matter for the first time, in written and oral submissions. The Court therefore refrained from making any order with respect to that oral application.

On 5th February 2025, the first and fifth respondents filed a Notice of Opposition in which they indicated that they oppose the application for clarification and an interim stay of the Court Order, specifically in relation to the transfer of the Rayley Stakeholder Funds on the grounds that the Court Order is clear and requires no further clarification; the consequential orders relate specifically to the Rayley Stakeholder Funds; and there is no urgency to the Application, and no basis or utility for the order sought.

On 20th February 2025, the first and fifth respondents filed a Notice of Opposition in which they indicated that they oppose the stay in respect of paragraphs 2 and 4 of the Court Order.

With respect to the application for clarification, the second and third respondents submitted that the judgment and orders of the Court of Appeal are unambiguous and required no clarification and that since the judgment and consequential orders have been set aside, Rayley had no legal or other entitlement to the Judgment Sums and absent any stay order made by this Court, the respondents were entitled to have the Judgment Sums returned to them or paid to their order should they so wish. They invited the Court to dismiss the Clarification Application and to make it plain that future litigants should not adopt a similar course that they refer to as abusive and unnecessary.

The second and third respondents indicated further that if and to the extent that this Court does entertain the applicant's request for clarification, they request that the Court also 'clarifies' that the effect of the Court Order and specifically, the setting aside of the consequential orders of the learned trial judge, is to require the applicant to return to them the interim payment of US\$900,000.00 made on account of a costs order at trial that she has so far, and unjustifiably refused to repay. The Court did not consider this oral application since no written application was filed in relation thereto as conceded by learned King's Counsel.

Further, the second and third respondents indicated that they oppose a stay of the Court Order, setting aside the judgment and consequential orders of the learned judge at paragraph 2 of the Court Order, a stay regarding the Judgment Sums, which they regarded as an inappropriate attempt to obtain an injunction through the back door. They also oppose a stay of the costs award made in the Court Order at paragraph 4.

The fourth respondent adopted the submissions advanced by the second and third respondents. It restricted its submissions to (a) whether the clarification was required in respect of the Court Order, and (b) whether such clarification would yield a finding that the learned trial judge's 19th January 2022

order directing Rayley to indemnify the applicant for costs incurred in the derivative claim was a consequential order caught by the Court Order, and was thereby set aside.

The fourth respondent submitted that there is no need for the supposed 'clarification'. Further, it contended that it is obvious and clear that the Rayley Indemnity Order had been set aside following on as it did and premised on the claimant's success at the trial, as stated by the learned trial judge. It concluded that the Rayley Indemnity Order was therefore an order consequential on the trial judge's judgment.

The Court noted that the applications arise from three claims initiated in the High Court (BVIHCMAP2022/0015 against Wong Kie Yik (WKY) and Wong Kie Chie (WKC); BVIHCMAP2022/0016 against Esben and Incredible Power; BVIHCMAP2022/0014 Rayley v Katherine Fong (derivative action) against the respondents by the applicant in a dual capacity - in a representative capacity, on behalf of her husband's estate and derivatively on behalf of the fourth respondent alleging, among other things, misappropriation of funds belonging to Rayley. The Court noted further that on 18th March 2021, judgment was entered against the respondents by the learned trial judge, except in relation to the applicant's claim in conspiracy.

The Court noted further that by the March 2021 and November 2021 orders, the learned trial judge entered judgment against the respondents and directed them to make payments of the Rayley Stakeholder Funds to the fourth respondent's/ derivative claimant's solicitors Applebys; and noted further that those orders were the subject of three Notices of Appeal filed by the respondents on 3rd March 2022 against the decisions of Wallbank J.

The Court read and considered the judgment and orders of this Court dated 15th January 2025, the Certificate of Result of Appeal; the notice of application for clarification, the supporting affidavits and other supporting documentation; the Notice of

Motion for clarification and stay of execution; the affidavits filed on behalf of the respondents, and the respondents' notices of opposition.

Further, the Court considered the skeleton arguments filed by the applicant on 5th February 2025, and her skeleton arguments in reply filed on 23rd May 2025; the skeleton arguments of the first and fifth respondents filed on 9th May 2025; the skeleton arguments of the second and third respondents filed on 9th May 2025; and the skeleton arguments of the fourth respondent filed on 14th May 2025; the first affidavit of Andre Walters filed on 4th February 2025; the first affirmation of Emma Smith dated 10th March 2025, the first affirmation of Robert Christopher Gregory dated 10th March 2025 with exhibits; the third affidavit of Khoo Shufen Joni dated 24th March 2025; and the oral submissions made by each party at the hearing.

Application for Clarification

In relation to the application for clarification of paragraph 2 of the Court Order, having considered all of the circumstances, in particular, the applicants' acknowledgement that paragraph 2 of the Court Order is not ambiguous and the legal authorities cited by the parties, the Court was not persuaded that this was an appropriate case in which it was necessary, convenient, or just to make any order clarifying the Court Order. The Court was satisfied that the Court Order made by the Court of Appeal on 15th January 2025 was, in all respects, unambiguous and required no further elucidation. It therefore declined to provide clarification in respect of the Court Order.

Application for Stay

The Court considered Section 7 of the Virgin Islands (Appeals to Privy Council) Order 1967 ('the 1967 Order') which provides:

'Where the decision appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to

appeal, either to direct that the said decision shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said decision to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security to the satisfaction of the Court, for the due performance of such Order as [His] Majesty in Council shall think fit to make thereon.'

The Court also considered the principles set out in the decision of *C-Mobile Services Limited v Huawei Technologies Co. Limited* BVIHCPMAP2014/0017 (delivered 2nd October 2014, unreported), that in determining an application for a stay: (i) the Court should take into account all the circumstances of the case; (ii) a stay is the exception rather than the general rule; (iii) the party seeking a stay must provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted; (iv) in exercising its discretion, the Court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered; and (v) the Court should take into account the prospect of the appeal succeeding, but only where strong grounds of appeal or a strong likelihood the appeal will succeed is shown.

The Court took into consideration further, all the circumstances of the case and concluded that it was satisfied that the applicant failed to provide cogent evidence that the appeal to His Majesty in Council will be stifled or rendered nugatory unless a stay is made in relation to the judgment sums or the Rayley Indemnity Order or the costs order made by the Court of Appeal. The Court determined that the applicant had therefore not met the threshold for a grant of a stay in respect of those aspects or limbs of her application and motion. Accordingly, the applicant's prayer for an order staying paragraph 2 of the Court Order, staying the transfer of the Judgment Sums from Rayley; staying the Rayley Indemnity Order, or

staying the payment of the costs order made by the Court of Appeal on 15th January 2025, against her were refused.

Case Name:

**Andrey Titarenko
v
Emmerson International Corporation**

**[BVIHCMAP2021/0019]
(Territory of the Virgin Islands)**

Date:

Wednesday, 18th June 2025

Before:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Reginald T.A Armour, Justice of Appeal
[Ag.]
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal [Ag.]**

Appearances:

Appellant: No Appearance

Respondent: Mr. Robert Nader

Issues:

Application for appeal to be heard in camera - The Court file in the proceedings below is sealed - The appellant is restrained by the Injunction from supplying material filed in the proceedings below to third parties - Whether permitting this matter to proceed in public subverts, or has the potential to subvert, both the Injunction and the sealing order made below

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED

1. The hearing of the appeal will proceed in camera.
2. Costs of the application will be in the appeal.

Reason:

Before the Court was an application filed on 23rd May 2025 on behalf of Emerson International Corporation, the Respondent in the appeal in which it seeks to have the appeal heard in camera. The Court read the application, reviewed the contents of the hearing bundle in support of the application and heard counsel for the respondent in oral submissions.

The application was advanced in the absence of the appellant Mr. Andrey Titarenko and was unopposed. In the circumstances the Court was satisfied that the application ought to be granted for the reasons set out in the application and on the basis of the representations advanced orally by counsel.

Case Name:

Andrey Titarenko
v
Emmerson International Corporation

[BVIHCMAP2021/0019]
(Territory of the Virgin Islands)

Date:

Wednesday, 18th June 2025

Before:

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Reginald T.A Armour, Justice of Appeal
[Ag.]
The Hon. Mde. Cadie St. Rose Albertini, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Robert Nader

Issues:

Civil appeal - want of prosecution of appeal - whether the appellant is in breach of CPR 62.10 by not filing

submissions in support of the appeal - non attendance of the appellant at the appeal hearing

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal filed on 13th July 2021 is dismissed for want of prosecution, the appellant having failed to attend the hearing to prosecute his appeal.**
- 2. The respondent will have its costs to be assessed if not agreed within 21 days of the date of this order.**
- 3. A copy of this order is to be served on the appellant by the court office.**

Reason:

Before the Court was an appeal filed on 13th July 2021 by Mr. Andrey Titarenko. The appeal challenged the orders made in the court below in an extempore judgment delivered on 3rd May 2021 and an order dated 3rd May 2021. The Court was in possession of the notice of appeal which attached a document entitled attachment 1 to the notice of appeal which purported to set out the submissions of the appellant filed in support of the appeal. The Court also reviewed the written submissions of the respondent filed on 9th August 2021 in opposition to the appeal.

At the commencement of the appeal hearing the Court took appearances for the parties in the appeal and it became clear that the appellant was absent from the proceedings and that he failed to appear to prosecute his appeal. The Court was directed to correspondence by way of an email dated 12th June 2025 from the appellant, Mr. Andrey Titarenko to the court office in which he represents and attached the notice of the hearing of the appeal issued on 5th June 2025, which notice made clear that the appeal was scheduled for hearing in the week of 16th June 2025. It was clear to the Court that the appellant was aware of the date of hearing. In the referenced correspondence the appellant raised a number of concerns regarding the continued legal representation of the respondent in this appeal by Forbes Hare Law firm. The Court was

aware that these concerns have been the subject of legal proceedings in the high court of the Territory of the Virgin Islands and in the court of appeal and more substantively in BVIHCMAP2022/0035. Further at paragraphs 7 to 9 of the correspondence the appellant recorded the following:

“Due to Forbes Hare’s unqualified representation and the court’s refusal to address my procedural requests I contend that the court is not properly constituted to hear the appeal in the week of 16th June 2025. Any hearing under these circumstances would not constitute a valid court proceeding and I will not attend the purported hearing scheduled for the 18th June 2025. I demand that the court vacate the hearing scheduled for 18th June 2025 and adjourn it until my allegations against Forbes Hare are determined in open court and my procedural requests are resolved in compliance with CPR and the interests of justice. Should the Court proceed with the hearing despite these unresolved issues I demand that this email be presented to the panel to ensure that they are fully aware of my objections and the procedural irregularities.”

In that regard the Court noted the following:

1. Mr. Andrey Titarenko, the appellant in this appeal is well aware that the appeal hearing was set down for 18th June 2025.
2. The appellant has categorically indicated that he would not attend the hearing and has advanced grounds which he felt would justify his non- attendance at the hearing.

The Court also noted the judgment in BVIHCMAP2022/0035 delivered on 22nd September 2023 at paragraphs 65 to 73 which addressed the very concerns that were highlighted by Mr. Titarenko in his email correspondence of 12th June 2025 and the certificate of non-compliance dated 5th March 2025 in which this appeal was dismissed. The Court noted that the extant position is that Forbes Hare is entitled to continue to represent the appellant in these proceedings.

The Court also noted CPR 62.25 which provides that:

- (1) If no party appears at the appeal and the court is satisfied that the parties have received notice of the hearing in accordance with these rules, the court may strike out the appeal and any counter appeal.
- (2) If one or more but not all parties appear, the court may proceed in the absence of the parties who do not appear if satisfied that the party who does not appear has received notice of the hearing in accordance with the rules”.

The Court was satisfied that the appellant received the requisite notice, has voluntarily absented himself from the hearing of this appeal, has not attended to prosecute his appeal, and has not advanced any good reasons why this Court should not proceed in his absence.

Case Name:

**[1]WWRT Limited
[2]Olga Gutovska
v
Boris Kaufman**

**[BVIHCMAP2024/0015]
(Territory of the Virgin Islands)**

Date:

Wednesday, 18th June 2025

Before:

**The Hon. Mde. Paula Gilford, Justice of Appeal [Ag.]
The Hon. Mde. Petra Nicola Byer, Justice of Appeal [Ag.]
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Applicants:

Mr. Steven Thompson, KC with Mr. Christopher Mc Carthy

Respondent:

Mr. Nathan Pillow, KC with him Dr. Alecia John

Issues:

Motion for conditional leave to appeal to His Majesty in Council - Whether this is an appropriate case for a grant of conditional leave to appeal pursuant to section 3(2)(a) of the Virgin Islands (Appeal to the

Privy Council) Order 1967 - Whether the applicant's intended appeal raises questions which by reason of their great, general or public importance or otherwise ought to be submitted to His Majesty in Council - Application for a stay of the costs provisions of the order being appealed - Whether the applicant has good prospects of succeeding on appeal

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. Judgment is reserved.
2. The interim order granted by Michel CJ (as he then was) on 19th February 2025 for a stay of execution filed on 3rd February 2025 shall remain in force until the judgment in the matter is issued.

Case Name:

[1]Dr. Ambroisie Bryant Chukwueloka Orjiako
[2]Shebah Petroleum Development Company Limited (BVI)
[3]Abbeycourt Energy Services (BVI) Limited
[4]Neville Investments Management Limited
[5]Plumage Management Limited
[6]Pursley Resources Ltd
[7]Sinclair Commercial Limited
[8]Salvic Energy Ltd
[9]Salvic Petroleum Resources Ltd
[10] Mrs Igra Chioma Henrietta Orjiako
v
Access Bank PLC

[BVIHCMAP2024/0036]
(Territory of the Virgin Islands)

Date: Friday, 20th June 2025

Before: The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. Reginald T.A Armour, Justice of Appeal
[Ag.]
The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. Robert Weekes KC with him Mr. Scott Cruickshank

Respondent: Mr. Steven Thompson KC with him Mr. Richard Browne and Mr. Sean Kenney

Issues: Interlocutory appeal - The legal test for the appointment of interim receivers - Whether the learned judge failed to identify or address any of the appellants' key arguments against the continuation of the receivership - Whether the learned judge failed to take all relevant matters into consideration - Whether the learned judge breached his duty to give reasons for his rejection of the appellants' submissions or to state reasons for his decision - Material non-disclosure - Whether the learned judge was wrong to conclude that there had been no material non-disclosure or breach of the duty of fair presentation when the application for the appointment of receivers was made ex parte - Duty of fair presentation - Whether variation order ought to be set aside

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The appellants' appeal in respect of ground number 2 is hereby withdrawn and dismissed.
2. The parties shall file and exchange on or before 30th June 2025 individual written chronology of

relevant events with appropriate cross references to the case bundles, appeal bundles, skeleton arguments and/or transcripts in accordance with Paragraph 4.6 of Practice Direction No. 3 of 2014.

3. Judgment is reserved.

Reason:

The Court noted and took consideration of the representation by the appellants that they wished to withdraw ground number 2 of the notice of interlocutory appeal filed on 20th December 2024 dealing with the issue of alleged apparent bias of the learned trial judge.

The Court also invited the parties to file written chronologies of events with appropriate cross references pursuant to Practice Direction No.3 of 2014.

Case Name:

Jada Hopkins

v

Alithia Adams

[BVIHCVAP2024/0009]

(Territory of the Virgin Islands)

Date:

Friday, 20th June 2025

Before:

**The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]
The Hon. Mr. Darshan Ramdhani, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Giselle Jackman-Lumy

Respondent:

Ms. Monique Peters

Issues:

Civil Appeal - Appeal against judge's dismissal of the appellant's claims for possession and damages - Whether the learned judge erred in dismissing the claim for possession in its entirety - Whether the learned judge's decision is inconsistent with the findings contained in the judgment rendered - Proprietary estoppel - Whether the learned judge erred in finding that proprietary estoppel was established in the absence of the essential ingredients of same - Whether the learned judge erred in placing weight on the affidavit of Lorraine La Rose as the matters contained therein were inadmissible, irrelevant and in any event, of no probative value - Whether the judge erred in failing to consider legal precedent which warns courts not to penalize family members for acts of kindness - Whether the learned judge failed to properly consider the respondent's lack of credibility and overall conduct - Costs- Whether the judge erred in finding that the respondent's level of success was greater and thereby awarded her 80% of the costs

Type of Order:

N/A

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A

Case Name:

**NKT
v
[1]NMH
[2]ATG**

**[BVIHCMAP2024/0031]
(Territory of the Virgin Islands)**

Date: Friday, 20th June 2025

Before: The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
The Hon. Mde. Paula Gilford, Justice of Appeal [Ag.]
The Hon. Mde. Ingrid Mangatal, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Alain Choo-Choy KC, with him Mr. Christopher McCarthy

Respondents: Mr. Ben Valentin KC with him Mr. Andrew Trotter, Claire Goldstein and Mr. James Petvokic

Issues: Interlocutory appeal - Order setting aside appellant's application to set aside ex parte joinder and discharging freezing injunction - Whether the learned judge erred in concluding that the appellant was properly joined as a defendant despite no pleaded case against him - Whether the judge erred in law in finding that the jurisdictional gateways for service out of the jurisdiction were satisfied - Whether the learned judge erred in finding that there was a basis for a charging order application (and other ancillary relief) to be served on the appellant outside of the jurisdiction - Whether the judge erred in holding that personal jurisdiction is not required over a party for a charging order application or final hearing - Whether the learned judge erred when making a costs order in relation to the application without having sought representations from the parties before doing so

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Reason:

N/A