

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

HYBRID: IN PERSON/VIDEOCONFERENCE
TERRITORY OF THE VIRGIN ISLANDS
MONDAY 24TH – FRIDAY, 28TH MARCH 2025

JUDGMENTS

Case Name:

Leslie Phillips
v
Kyron Phillips

[GDAHCVAP2023/0010]
(Grenada)

Date:

Wednesday, 26th March 2025

Coram for
delivery:

The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. V. Dexter Theodore, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Ruggles Ferguson KC

Respondent: Ms. Caryn Adams

Issues:

Interlocutory Appeal - Expert evidence - Refusal of application for leave to call expert witness - Exercise of discretion by master - Whether the master failed to appreciate the importance of the proposed expert evidence to the disposition of the matter - Rule 32.2 of the Civil Procedure Rules 2000 – Application of CPR 32.2 and 32.4 Whether expert evidence was reasonably required to resolve the proceedings justly - Whether master erred in finding that the expertise of the proposed expert witness would not assist the court with the matters in issue and the just disposal of the case

Result/Order:

IT IS HEREBY ORDERED THAT:

1. The appellant's interlocutory appeal of the learned master's decision of 16th February 2023, is allowed.
2. The appellant's application for leave to call Mr. Eric Bridgeman as an expert witness is remitted for determination by the learned trial judge.
3. The respondent shall pay to the appellant the costs of this appeal to be assessed within 21 days of today's date, if not agreed.

Reason:

1. This matter involves the examination of the exercise of discretion by the learned master. The exercise of judicial discretion engages the overriding objective of the Civil Procedure Rules 2000 ("CPR ") which is to do justice between the parties. This encompasses several factors including ensuring as far as practicable that the parties are on equal footing. The court is enjoined to act judicially when called on to exercise any discretionary power. In doing so, it must consider any prejudice or advantage that may be occasioned to a litigant arising from its determination.
2. This dispute engages the application of rules 32.2, 32.4 and 32.6 of the CPR. Rule 32.2 is unambiguous. It stipulates that only expert evidence that is 'reasonably required to resolve the proceedings justly' will be permitted in civil proceedings. It follows that a judicial officer faced with an application for leave to permit a witness to provide expert opinion must satisfy himself or herself that such evidence is reasonably required to justly resolve the proceedings. CPR 32.4(2) addresses the content of such expert evidence and makes it pellucid that subjective, biased opinions outside the expert witness' expertise are inadmissible and can form no part of the expert witness' testimony. These two sub-rules make clear that a decision of whether to permit an expert to present expert testimony is one of admissibility of expert evidence. CPR 32.6 touches and concerns the question of whether

expert evidence is necessary for resolving the proceedings and in a general sense what kind of expert evidence is relevant and admissible towards that end. The issue of what specific expert evidence would be admissible can only be decided when an expert report is prepared and is being produced at trial. It is only at that point that the full considerations of relevance can be entertained. Such an exercise may be conducted only by a trial judge who will have to marshal the material facts, the issues and the law.

Rule 32.6 Civil Procedure Rules 2000 applied; Joseph W. Horsford v Geoffrey Croft ANUHCVP2014/0006 (delivered 22nd October 2014, unreported) applied.

3. In deciding whether to grant leave to adduce expert testimony, a judicial officer must determine firstly whether the subject matter is one in respect of which expert evidence is permissible. This necessitates consideration of whether a person untrained, inexperienced or unskilled in that area would be able to arrive at a sound judgment without the testimony of an expert in the field and whether there exists a sufficiently established, reliable, organised and recognised 'body of knowledge or experience' in that discipline on which reliance can be placed in arriving at a just conclusion. Secondly, the court must be satisfied that the proposed expert witness possesses the requisite skills, knowledge or experience in the specialist area to enable him to provide the court with a useful opinion on the subject matter of the dispute.

R v Bonython (1984) 38 SASR considered.

4. The subject matter about which the appellant proposes to elicit expert evidence concerns a latent defect in the truck's brakes and falls within the field of mechanical engineering specific to automobiles. There can be no doubt that this is an area in which expert testimony is

permissible. As to whether a lay person would be able to form a sound judgment on the question of whether the truck had a latent brake defect, the irrefutable answer is no. This matter required technical knowledge in mechanical engineering, which the judge could not be expected to have. Therefore, the master erred in principle and made an incorrect decision. The court takes judicial notice that there is a body of knowledge or experience which is sufficiently organised or recognised as a reliable body of knowledge and experience in the field of mechanical engineering, as this is a matter which is notoriously known by the public in general. While the learned master acknowledged the proposed expert's qualifications, he did not think that his opinion was necessary. He erred in this conclusion, as it was influenced by his earlier mistake in dismissing the need for expert evidence of the latent defect on the truck's brakes. This shows he did not fully grasp the importance of the expert evidence in resolving the dispute arising on the appellant's defence regarding the malfunctioning brakes.

R v Bonython (1984) 38 SASR followed.

- 5. A further consideration that arose was whether the proposed expert has to physically examine the truck in question or whether he could rely on the contents of the earlier report prepared by Sergeant Powlette. There is no need for the proposed expert witness to have personally examined the truck, provided that there is relevant available material and evidence from which he could present a satisfactory expert report to the court constituting relevant opinion evidence.**

Myers, Brangman and Cox v The Queen [2015] UKPC 40 considered; Kenny v Cordia (Services) LLP [2016] 1 WLR 597 considered.

Case Name: [1.] Amstel Investment Holdings Limited
[2.] Christopher Stuart Mckenzie
[3.] Cavendish Management Enterprises Limited

v

[1.] AMS Holding Limited
[2.] Circle Capital Limited
[3.] Sukru Evrengun

**[BVIHCMAP2024/0002]
(Territory of the Virgin Islands)**

Date: Thursday, 27th March 2025

Coram for delivery: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. V. Dexter Theodore, Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. Simon Hall

Respondents: Mr. Andre Sheckleford

Issues: Commercial Appeal – Appeal against learned judge granting fixed date claim and dismissing ancillary claim – Fiduciary duty – Unfair prejudice – Improper purpose – Whether the learned judge erred in failing to hold that the debt-for-equity swap was carried out at an undervalue and further erred in failing to hold that the fact that the debt-for-equity swap was at an undervalue also amounted to unfair prejudice – Whether the judge erred in finding that the debt-for-equity swap was carried out for a proper purpose which was not pleaded by the respondents – Whether the judge erred in failing to find that there had been unfair prejudice to Amstel by the unilateral and retrospective increase of the interest payable upon the Circle and Corepoint debts

Result/Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The orders of the trial judge are affirmed. The matter is remitted to the trial judge for consideration of consequential directions.
3. The appellants shall pay the respondents' costs of this appeal and in the court below to be assessed by a judge of the Commercial Court if not agreed within 28 days of the date of delivery of this judgment.

Reason:

1. A petitioner must demonstrate both unfairness and prejudice in order to succeed in an unfair prejudice petition under section 184I of the BCA. The court's mandate in adjudicating an unfair prejudice claim is to do what is just and equitable to achieve fairness, which must be applied judicially, and what constitutes fairness must be determined upon rational principles. Ultimately, the concept of fairness must be informed and shaped by context and background. There are two features constituting the background which must be kept in mind when considering unfair prejudice. The first is that the manner in which the company's affairs are conducted is regulated by its articles of association and sometimes by collateral agreements between shareholders (the legal background). A member of a company will therefore not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. The second feature is that there may be cases in which equitable considerations will prevent those having conduct of the affairs of the company from insisting on their strict legal rights.

O'Neill v Phillips [1999] 1WLR 1092 applied; JF Ming Inc et al v Ming Suit Hung, Ronald et al BVIHCMAP2016/0039 (delivered 30th June 2016, unreported) followed; Grace v Biagioli [2005] EWCA Civ 1222 applied.

2. In relation to whether the debt-for-equity swap was carried out at an undervalue and whether that fact, as a matter of law, amounted to unfair prejudice, it cannot be said on a proper analysis of *Re Sunrise Radio*, a decision on which the appellants rely, that the compulsory redemption of a shareholder's shares at an undisputed significant undervalue is necessarily unfairly prejudicial. The determinative factor in that case was the breach of fiduciary duty which constituted the unfairness. It was prejudicial because the failure of the directors to have regard to all relevant considerations resulted in the majority shareholders obtaining the shares at a much lower price and diluted the minority shareholding to a much greater extent than would have resulted had those matters been considered. The principle to be extracted from *Re Sunrise Radio* case indicates that a share issue/dilution at an undervalue will be unfairly prejudicial if the directors are in breach of their fiduciary duties by reason of failing to give proper consideration to the price at which the share issue should occur. The appellants' submission that the mere dilution of the minority shareholding will necessarily establish unfair prejudice therefore cannot be maintained. That proposition is too broadly cast and would suggest that in any case where the minority converts debt to equity or otherwise issues new shares at a price which the court subsequently determines was too low unfair prejudice would be established. Such an approach ignores the principle that whether in any given case the conduct complained of is unfairly prejudicial is a matter to be determined on the particular facts and circumstances of a case, as opposed to by reference to any pre-defined set of circumstances. The judge's finding that there was no unfairness because there was no evidence to establish that Mr. Evrengun engineered the valuation error which led to the undervalue and that he was unaware of said error was entirely open to him on the evidence. The undervalue, without more, cannot be said to be necessarily unfairly prejudicial. Additionally,

it was not wrong or improper for the judge to defer the valuation issue until liability had been established, particularly considering that the ascertainment of the correct value required expert evidence, and the judge seemed not to have reposed full confidence in either of the parties' experts.

Re Sunrise Radio [2009] EWCH 2893 (Ch) applied; Re Cardiff City Football Club (Holdings) Ltd [2022] EWHC 2023 (Ch) considered.

3. As it relates to the issue whether the judge erred in finding that the debt-for-equity swap was carried out for a proper purpose which was not pleaded by the respondents, the starting point is that a matter such as the raising of finance is a management call within the remit of the directors, and it would be wrong for the court to substitute its opinion for management's or to question the correctness of management's decision if bona fide arrived at. Nonetheless, when a dispute arises whether the directors of a company made a particular decision for one purpose or for another or whether, there being more than one purpose, one or another purpose was the substantial or primary purpose, the court must look at the situation objectively in order to estimate how critical or pressing, or substantial or, per contra, insubstantial an alleged requirement may have been. If it finds that a particular requirement, though real, was not urgent, or critical, at the relevant time, it may have reason to doubt, or discount, the assertions of individuals that they acted solely in order to deal with it, particularly when the action they took was unusual or even extreme. The stages of the court's enquiry are to (i) identify the power that has been exercised; (ii) identify the proper purpose for which that power was delegated to the directors; (iii) identify the substantial purpose for which the power was exercised; (iv) determine whether that purpose was proper or not.

Howard Smith Ltd v Ampol Ltd [1974] AC 821 applied; Antow Holdings Ltd. v Best Nation Investments Ltd BVIHCMAP2017/0010 (delivered 21st September 2018, unreported) followed; Nam Tai Property v IsZo Capital LP BVIHCMAP2021/0010 (re-issued 6th October 2021, unreported) followed; Independent Asset Management Company Ltd v Swiss Forfaiting BVIHCMAP2016/0034 (delivered 24th November 2017, unreported) followed.

4. The trial judge was very much immersed in this trial and in his comprehensive judgment has demonstrated intimate familiarity with the pleadings and evidence in the case. The suggestion that the judge set out an erroneous chronology in approaching the issue of improper purpose is simply unfounded. It was for the judge to determine whether the trigger for the 30th May 2019 resolution relating to the debt-for-equity-swap was the Letter Before Action, as contended by the appellants, or otherwise, and whether the subsequent letter to counsel for the appellants raising the question of the redemption of Amstel's shares was suggestive of a "pre-decided plan" which was "of a piece" with the redemption that followed it on 8th August 2019. The learned judge very clearly identified that the substantial purpose was to increase the capital of the company and reduce its debts and described this as the Evrengun parties' stated purpose. That finding accords with the pleadings. The judge therefore found no improper purpose at all. Instead, he accepted the Evrengun Parties' pleaded purpose and concluded that it was a proper one, which was the substantial or dominant purpose. The fact that the judge went on to assign a reason for, or a "collateral advantage" to be achieved by, the Evrengun Parties pursuing that purpose, namely to put the company in a better position to defend an application for the appointment of a liquidator, does not detract from the fact that he had expressly accepted the pleaded purpose and found it to be the

substantial or dominant and a proper purpose for the benefit of the company.

5. An appellate court should not interfere with a judge's findings of primary fact unless they are "plainly wrong", in the sense that either there was no evidence to support the finding, or the finding was based on a misunderstanding of the evidence, or the finding was one that no reasonable judge could have reached. Rarely would it be justifiable for an appellate court to overturn a finding of fact which turns on the credibility of the witnesses. It should not do so unless it is satisfied that any advantage enjoyed by the trial judge by having seen and heard the witnesses could not be sufficient to explain or justify his conclusions. This restraint extends to the judge's evaluation of the facts and any inferences to be drawn from them. In this case it cannot be said that the judge's findings in relation to proper purpose were plainly wrong in the sense that either there was no evidence to support the finding, or the finding was based on a misunderstanding of the evidence, or the finding was one that no reasonable judge could have reached. The facts found and inferences drawn by the judge on this issue were open to him on the evidence.

Kwok Kin Kwok v Yao Juan [2022] UKPC 52 followed.

6. The appellants' argument that, the judge erred in failing to find that there had been unfair prejudice to Amstel by Mr. Evrengun when he unilaterally and retrospectively caused the Company to increase the interest payable upon the debts, and therefore the sums due to Circle and Corepoint from 0 to 8% and 8 to 10% respectively must also fail. The judge found that it was not unfair because priority was being given to the Amstel and Cavendish debts. Based on evidence in relation to third party lending rates he found that the rates were at a commercially reasonable and unexceptional rate. The judge also considered the matter from

the Company's perspective and held that it was not against its interests to be asked to pay 2% more on interest when that was still within commercial bounds. Nor was it contrary to its interests to be asked to pay 8% interest where hitherto it had paid none. With respect to the retroactive interest, the judge found that to be unobjectionable. The start date he found coincided with the breakdown of the relationship between Mr. Evrengun and Mr. McKenzie which he marks as 20th December 2017 and culminating with Mr. Evrengun's demand for Mr. McKenzie's resignation as director on 5th January 2018. In circumstances where both parties had decided to fall back on their strict legal rights in relation to debts owed to them, the judge found the actions of Mr. Evrengun to be justifiable. The judge was effectively saying that there was no breach of fiduciary duty by Mr. Evrengun and that the transactions increasing the interest rate did not amount to unfairly prejudicial conduct. Accordingly, there is no discernable basis for saying that the judge failed to consider whether Mr. Evrengun had complied with his fiduciary duties owed to the company as contended by the appellants.

Case Name:

**[1.] Sancus Financial Holdings Limited
[2.] Carson Wen
[3.] [Julia Yuet Shan Fung
v
Chad Christopher Holm
[BVIHCMAP2023/0024]
(Territory of the Virgin Islands)**

Date:

Friday, 28th March 2025

**Coram for
delivery:**

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of**

Appeal [Ag.]

Appearances:

Appellants: No appearance

Respondent: Mr. Michael Fay KC

Issues:

Commercial appeal – Interlocutory appeal – Risk of dissipation – Freezing injunction – Applicable test for granting freezing injunction – Whether the learned judge properly applied the test for granting a freezing injunction – Whether there was delay in applying for the freezing injunction - Just and Convenient - Whether the learned judge erred in determining that it was just and convenient to grant the freezing injunction- Ordinary course carve out exception - Whether the learned judge erred by refusing to provide a general ordinary course exception to the second and third appellants

Result/Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. The appellants will pay the respondent's costs of the appeal, to be assessed by a Judge of the Commercial Court, if not agreed within 21 days of the date of this judgment.**

Reason:

- 1. Generally, an interlocutory injunction is a discretionary relief and the decision whether or not it ought to be granted is vested in the judge hearing the application. It is also well established that an appellate court has a limited role in reviewing the exercise of discretion by a judge below and is not to exercise an independent discretion of its own, but rather, defer to the judge's exercise of the discretion and not interfere with it merely because this Court would have exercised the discretion differently.**

Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 applied; Multibank FX International Corporation v Von Der Heydt Invest SA BVIHCMAP2022/0061 (delivered 5th July 2023, unreported) followed; Hadmor Productions Ltd and others v Hamilton and another [1983] 1 A.C. 191 followed.

- 2. The success of an applicant on an application for a freezing injunction depends primarily on whether a court is satisfied that: (i) there is a good arguable claim in the amount sought to be frozen; (ii) there is a real risk that a respondent will dispose of its assets in such a manner that a judgment against it will go unsatisfied; and (iii) it is just and convenient to make the order sought. These standards are conjunctive and all three must be satisfied. It is trite that the threshold for establishing a good arguable case is not a high one. An applicant must satisfy the court that its case is more than barely capable of serious argument, and it need not necessarily be one that the judge believes has a better than 50% chance of success.**

Emmerson International v Renova Holding Limited BVIHCMAP2019/0018 (delivered on 7th February 2023, unreported) followed; Multibank FX International Corporation v Von Der Hyte SA BVIHCVAP2021/0009 (delivered on 23rd February 2023, unreported) followed.

- 3. The question whether a judge has considered irrelevant material or gave too little, too much, or no weight to relevant material, is not answered by an overzealous dissection of the language of the judgment. It is evident that the judge applied the relevant tests and considered all the evidence before him and correctly exercised his discretion to grant the freezing orders inclusive of the asset disclosure orders. Consequently, there is no error in principle and the learned judge's findings do not exceed the generous ambit within which reasonable disagreement is possible, to warrant appellate interference.**

Dufour v Helenair (1995) 52 WIR 188 applied; Hadmor Productions Ltd & Others v Hamilton & Others [1982] 1 All ER 1042 applied; Ming Siu Hung & Others v JF Ming Inc & Another [2021] UKPC 1 applied; Lakatamia Shipping Company Ltd v Morimoto [2019] EWCA Civ 2203 followed.

- 4. Delay will usually be considered in relation to risk of dissipation. There is no general rule that delay in applying for a freezing order is necessarily a bar to obtaining injunctive relief. However, in seeking to rely on delay as a factor a respondent must demonstrate that the applicant never really believed that a real risk of dissipation existed, or if an applicant seriously thought so, an application would have been made much earlier.**

Emmerson International Corporation v Renova Holding Limited BVIHCMAP2019/0018 (delivered 7th February 2023, unreported) applied; Madoff Securities International Ltd v Raven [2011] EWHC 3012 (Comm) applied.

- 5. A freezing injunction can have a serious effect on a company's business. The ultimate question is whether it is just and convenient to grant a freezing order, bearing in mind that it has the nuclear effect of prohibiting the affected party from dealing with its assets. The Court must therefore be satisfied, even in a case where a good arguable case and a risk of dissipation have been established, that the grant or continuation of an injunction is not automatic. The court must be satisfied that it is just and convenient to grant or continue the injunction. Accordingly, the learned judge conducted the evaluative exercise required by law and gave succinct and precise reasons for concluding that the balance of convenience and overriding objective favoured granting the freezing order.**

Multibank FX International Corporation v Von Der Hyte SA BVIHCVAP2021/0009 (delivered on 23rd February 2023, unreported) followed.

6. With respect to the appellants' contention that the learned judge did not consider the value of the respondent's cross undertaking, this Court is required to give deference to the learned judge on the consideration or weight to be given to these matters. The value of a cross undertaking on its own would not be determinative of the application but must be viewed against the totality of the circumstances before the court. There is no basis for interfering with the learned judge's decision to grant the freezing order, when one considers that the judge was satisfied of the preponderance of the evidence, the applicable tests, and in furthering the overriding objective, that the freezing order should be granted.
7. In relation to the ordinary course of business carve out/exception, the learned judge considered all submissions placed before him in arriving at a balanced position on the carve out terms to be included in the freezing order. There is no error in principle, or departure from the generous ambit of reasonable disagreement by the learned judge to warrant interference with his decision on this matter.

APPLICATIONS & APPEALS

Case Name:

RZ3262019 Limited

v

[1] Happy Lion Ventures Ltd.

[2] Chinex Limited

[BVIHCMAP2023/0011]

(Territory of the Virgin Islands)

Date:

Monday, 24th March 2025

Before:

The Hon. Mr. Mario Michel, Chief Justice [Ag.]

**The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]**

**The Hon. Mr. Anthony Gonsalves, Justice of Appeal
[Ag.]**

Appearances:

Applicant: Mr. David Davies KC with him Ms. Sarah Latham and Mr. Romauld Johnson

Respondent: Mr. James McWilliams and Mr. Scott Tollis

Issues:

Application for Condition leave to His Majesty in Council - Section 3(2) of the Virgin Islands (Appeals to the Privy Council) Order 1967 - Whether an important question of law is raised by the grounds of the intended appeal - Doctrine of common mistake - Court's approach to the identification of the subject matter of contract as being the sale of the shares - Whether the Court of Appeal applied a narrow view of the issue while the case law identifies that a broader view can be taken - Whether the grounds of appeal raise a point of law that is of great general or public importance

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application for conditional leave to appeal to His Majesty of Council is denied.**
- 2. Costs to the respondent in the liquidation.**

Reason:

Before the Court was an application by the applicant, RZ3262019, for conditional leave to appeal to the Privy Council against the decision of this Court delivered on 28th July 2024. The application was made by notice of motion filed on 15th August 2024 and it was supported by an affidavit of Dong Shuling filed on the same date. The application was made pursuant to section 3(2) of the Virgin Islands (Appeals to the Privy Council) Order 1967 which provides that :

“Subject to the provisions of this Order, an appeal shall lie from decisions of the Court to [His] Majesty in Council with the leave of the Court in the following cases -

- (a) where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to [His] Majesty in Council, decisions in any civil proceedings; and**
- (b) such other cases as may be prescribed by any law for the time being in force in the Virgin Islands.”**

The particular limb of section 3(2) which the applicant based his application on was that the question involved in the appeal for which leave is being sought, is one of great general or public importance and or otherwise. According to the applicant’s notice of motion, there were five grounds in its application for leave, which five grounds were enumerated in the notice of motion. The five grounds were as follows:

- (1) the Court of Appeal was wrong to reject the expert evidence of Dr. William Wong SC that there were reasonable grounds for disputing the existence of a debt;**
- (2) the Court of Appeal erred in finding that the law on common mistake in Hong Kong is the same as that in England and Wales following *Great Peace*;**
- (3) the Court of Appeal was wrong to find that even if common mistake were established that would mean that it would be “impossible” to perform the Vendor Loan Agreement;**
- (4) the Court of Appeal in *Sparkasse* held that “the dispute must be genuine in both a subjective and objective sense. That means that the reason for not paying the debt must be honestly believed to exist...” This requirement that the dispute be genuine in a “subjective sense” is wrong, and led the Court of Appeal in the present case into error. The test set out in *Sparkasse* as applied by the Court of Appeal makes it too difficult to establish a genuine and substantial dispute;**
- (5) the Court of Appeal wrongly held that the Company did not have a genuine cross-claim.**

The applicant filed skeleton arguments on 20th December 2024 in support of its application for leave to appeal. The skeleton arguments essentially elaborate on the arguments in the grounds of appeal contained in the notice of motion, it also prioritizes the grounds and subsumes certain grounds under others. The respondents filed a notice of opposition to the application for leave on 21st August 2024 and filed skeleton arguments on 7th February 2025 resisting the applicant's application for leave to appeal and responding to the applicant's skeleton arguments filed on 20th December 2024. On 20th February 2025, the applicant filed a reply to the respondent's skeleton arguments. Having read the judgment, the application for leave, the applicant's skeleton arguments in support of the application for leave, the respondents' skeleton arguments in opposition and the applicant's reply and having heard the oral arguments of counsel, the Court was not of the opinion that any of the questions raised in the grounds of the application seeking leave to the Privy Council is one of great general or public importance or satisfies the 'or otherwise category'. They would appear to be, no doubt, of great importance to the applicant but they did not appear to the Court to meet the threshold of being of great public or general importance or to fall in the or otherwise category. Consequently, the application for conditional leave to His Majesty in Council was accordingly denied. Costs were awarded to the respondent.

Case Name:

Vladimir Niyazov

v

[1.] Agon Litigation

(a legal entity, partnership or unincorporated body)

[2.] Arabella Di Iorio

[BVIHCMAP2024/0005]

(Territory of the Virgin Islands)

Date:

Monday, 24th March 2025

Before: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]

**Appearances
via zoom:**

Applicant: In person
Respondent: No appearance

Issues: Application for leave to appeal against costs order - Whether the applicant has a reasonable prospect of success on appeal - Whether the applicant complied with the unless order made by this Court on 28th October 2024

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application for leave to appeal is dismissed.

Reason: Before the Court was an application made by the applicant on 19th February 2024 for leave to appeal the costs order made by the learned trial judge in the court below on 1st February 2024. The application for leave to appeal was previously heard by the Court on 28th October 2024 where it was ordered that 'Unless the applicant submits an amended application for leave to appeal and an amended affidavit in support in which all scandalous, offensive and irrelevant references and allegations against the judge are entirely excised therefrom on or before 4th November 2024, the application for leave shall stand dismissed.'

On 19th November 2024 the amended application filed on 4th November 2024 was reviewed by a single judge of the Court of Appeal. The judge determined that the appellant made several flagrant observations in flagrant breach of the order of this Court dated 28th

October 2024 and in accordance with CPR rule 62.2(7) adjourned the matter for an oral hearing before the Full Court.

After hearing submissions from the applicant and considering the amended leave for appeal application, the Court agreed with the determination of the single judge and found that the applicant had failed to comply with the order dated 28th October 2024. The Court further determined that the application did not meet the threshold for a grant of leave to appeal. Therefore, the application for leave to appeal was dismissed.

Case Name:

**Darwin Blyden
v
[1.] Benedicta Samuels
Administratrix of the Estate of Abraham
Blyden, deceased
[2.] Estelle Wheatley**

**[BVIHCVAP2023/0005]
(Territory of the Virgin Islands)**

Date:

Monday, 24th March 2025

Before:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St. C Farara, Justice of Appeal
[Ag.]
The Hon. Mr. Anthony Gonsalves, Justice of Appeal
[Ag.]**

Appearances:

**Applicant: Mr. Sydney Bennett KC with him Ms. Anthea L. Smith
Respondent: Ms. Akilah Anderson for the first respondent
No appearance for the second respondent**

Issues:

Civil Appeal - Application for adjournment

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

The matter is adjourned to Tuesday 25th March 2025 at 9:00am for hearing.

Reason:

The appellant/applicant in the matter applied for an adjournment to file submissions which he indicated would be before the Court by the end of the day. The Court found that in the interest of justice, and with no opposition by the respondent, the applicant should be granted the adjournment to tomorrow, 25th March 2025.

Case Name:

**AO Alfa-Bank
v
Kippford Ventures Limited**

**[BVIHCMAP2024/0007]
(Territory of the Virgin Islands)**

Date:

Monday 24th – Tuesday 25th March 2025

Before:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]
The Hon. Mr. Reginald T.A. Armour, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Paul Lowenstein, KC with him Mr. James Gardner, Mr. Andrew Willins and Ms. Tamara Cameron

Respondent: Mr. Allain Choo-Choy, KC with him Ms. Claire Goldstein, Mr. Robert Maxwell Marsh, and Ms. Jhneil Stewart

Issues:

Interlocutory appeal – Appeal against order granting the respondent permission to adduce further evidence, dismissing the appellant’s application for a worldwide freezing injunction, granting the respondent’s application for a stay, ordering the appellant to make interim payments on account of costs to the respondent and awarding costs to respondent on its application – Whether the learned judge failed to discharge her judicial function- Whether the learned judge delayed in giving judgment until 29th February 2024, approximately 7 $\frac{3}{4}$ months later – Whether the learned judge failed to properly explain her decision either by identifying the vital issues or by explaining the way they were resolved – Whether the learned judge reached her decision without consideration of anything other than the parties’ pre-hearing skeleton arguments – Whether the learned judge erred in the exercise of her discretion by overlooking or failing to recall the appellant’s oral submissions on the further evidence application – Whether the learned judge failed to consider or to give appropriate weight either to the timing of the injunction application or to the appellant’s submissions regarding same – Whether the learned judge erred by failing to provide reasons or conduct a factual analysis to justify her implied conclusion that the application based on “accounting fraud” could have been brought earlier – Whether the learned judge failed to apply the relevant test in determining the injunction application - Whether the learned judge applied the incorrect test in determining whether the appellant had a good and arguable case – Whether the learned judge erred in law by holding that the under the Sanctions Legislation, any judgment the appellant may obtain would not be enforceable against the respondent, and by failing to record, consider or take into account relevant factors – Whether the learned judge erred by failing to properly apply the law in *Mints v PJSC National Bank Trust [2023] EWCA Civ 1132* - Whether the learned judge erred by failing to properly apply the law in *Mints* to give effect to the appellant’s common law and constitutional right to access to justice under the BVI Constitutional Order 2007 – Whether the learned judge erred by holding that “there are practical problems in making payment” to the respondent – Whether the learned judge erred by failing to consider the

appellant's evidence and argument that the respondent had not identified a route for the appellant to pay costs – Whether the learned judge erred by denying the appellant access to justice due to the respondent's failure to find a bank for lawful payments – Whether the learned judge erred by making conclusions contrary to BVI public policy – Whether the learned judge erred by misunderstanding the stay application – Whether the learned judge erred in her discretion by reaching inconsistent conclusions on the two limbs of the stay application

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Victorija Fetaimia
v
[1] Albert Court (Westminster) Management
Company Limited
[2] Dondore Incorporated (In Liquidation)
[BVIHCMAP2020/0018]
(Territory of the Virgin Islands)

Date: Tuesday, 25th March 2025

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Petra Nichola Byer, Justice of Appeal
[Ag.]
The Hon. Mr. V. Dexter Theodore, Justice of Appeal
[Ag.]

Appearances:
Applicant: In person

Respondents: Mr. Jonathan Addo and Mr. Mark Wells for the 1st respondent

Issues: Application for leave to His Majesty in Council - Permission to appeal the Court of Appeal's order dated 31st October 2024 striking out the applicant's appeal – Applicant's contention that the decision of 31st October was an interlocutory decision which allowed her to fully contest the 'underlying legal issues' in the BVI courts - Alleged procedural irregularities - Applicant's claims that she was not allowed by the court to be legally represented - Whether there were delays which were detrimental to the applicant prosecuting her appeal - Whether the applicant's proposed grounds of appeal meet the requirements of great general or public importance or otherwise for the grant of conditional leave to appeal to the Privy Council set out in the Virgin Islands (Appeals to the Privy Council) Order 1967 - Whether there is any merit in the proposed appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application filed on 20th November 2024 is dismissed.
2. Costs to the respondent to be assessed by the Chief Registrar if not agreed within 21 days of today's date.

Reason: Before the Court was an application seeking leave to appeal to His Majesty in Council from an order of this Court dated 31st October 2024 which inter alia, struck out and dismissed the applicant's appeal. The Court noted that in written legal submissions, the applicant also appeared to take issue with the order of the court dated 19th November 2019. This order was, however, not addressed in the application and in any event, any application to appeal of the same would be woefully out of time so it was therefore not considered. The application and the proposed appeal were against an

interlocutory case management order of this Court so leave was required under section 3 (2)(a) of the Virgin Islands (Appeals to the Privy Council) Order 1967 (“the Order”) which provides that:

“Subject to the provisions of this Order, an appeal shall lie from decisions of the Court to [His] Majesty in Council with the leave of the Court in the following cases -

- (a) where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to [His] Majesty in Council, decisions in any civil proceedings...”

In order to satisfy the requirement of section 3(2)(a) of the Order the applicant must show that the questions involved in the proposed appeal are either of great general or public importance or otherwise and also that the proposed appeal has merit. The meaning of section 3(2)(a) of the Order has been the subject of many judicial authorities including *Broad Idea International Limited v Convoy Collateral Limited* BVIHCMAP2019/0026 (delivered 31st July 2020, unreported). In that decision the Court found that “ the meaning of the expressions ‘great general or public importance’ and ‘or otherwise’ has been extensively litigated in the courts of the Commonwealth Caribbean. In terms of what amounts to a question that is of great general or public importance, reference is often made to *Martinus Francois v The Attorney General* where Saunders JA (now president of the Caribbean Court of Justice) said at paragraph 13 of his judgment, that:

“Leave under this ground is normally granted when there is a difficult question of law involved. In construing the phrase ‘great general or public importance’, the Court usually looks for matters that involve a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences for the public.”

The Court considered the written legal submissions of counsel for the respondent and the Court agreed with

his submission at paragraph 35 of the submissions that in construing the phrase 'great general or public importance' the Court usually looks for matters that involve a really serious issue of law; or a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences to the public. The Court also concurred with the submission that "where there is no genuine dispute on the applicable principles of law underlying the question which the applicant wishes to pursue on her proposed appeal; a question a question of great general or public importance does not ordinarily arise, especially where the principle of law is settled either by the highest appellate court or by longevity of application. Where the principle is one established by this Court but is either unsettled, in the sense that there are differing views or conflicting dicta, or there is some genuine uncertainty surrounding the principle itself, or it is considered to be far reaching in its effect, or given to harsh consequences, or for some other good reason would benefit from consideration at the final appellate level, this Court would be minded to seek the guidance of their Lordships' Board. Where, however, the real question on the proposed appeal is the way this Court has applied settled and clear law to the particular facts of the case, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted on this ground. In such a case, the question on the proposed appeal may be of great importance to the aggrieved applicant, but it would not for that reason alone be a question of great general or public importance". The Court also concurred that "the Privy Council will only grant permission to appeal where the applicant raises "an arguable point of law". It follows that, even where a question meets the great general or public importance test, the Court of Appeal should not grant leave unless the applicant's appeal is properly arguable."

The application in this case and the proposed appeal were against the interlocutory case management order of this Court, therefore leave was required under section 3(2)(a). The Court noted that the application here did not specifically address any of the limbs prescribed in section 3(2)(a) of the Order. Rather, in the

notice of application the applicant highlights the following general broad grounds:

- (1) reasons for the decision not being provided;
- (2) procedural irregularities;
- (3) breaches or miscarriages of justice which has caused her prejudice.

Under ground 1 the applicant took issue with the order of Mangatal J of 22nd November 2023 on the basis that it constituted a breach of due process, serious procedural flaw and which impacted adversely her beneficial rights. Under ground 2, the applicant took issue with the delay in receiving the transcript of proceedings between 18th November 2019 and 23rd September 2023 which violated procedural fairness and obstructed justice in the timely progression of her appeal. Under ground 3, the applicant took issue with the fact that she was denied access to the E-Litigation Portal and was without legal representation which impaired her ability to participate in the proceedings on an equal footing preventing her from properly defending her rights in the hearing of 22nd May 2024. Under ground 4, the applicant took issue with the listing decisions of the Chief Registrar and listing the respondent's debarring application before the substantive appeal. The applicant also took issue with the decision of Mangatal J on 4th December 2023 to transfer the shares in Dondore without proper regard to her legal interest. Under ground 5, the applicant took issue with the Court's decision to allow the bankruptcy trustee to interfere in the appeal despite that he has no standing in the Virgin Islands. Under ground 6, the applicant took issue with the court's disregard of Pereira CJ on 16th April 2024 that the appeal must proceed on 22nd May 2024. In written legal submissions, the applicant further took issue with other judicial orders which were identified. Under ground 7, the applicant took issue with a myriad of matters including the procedural handling of the appeal which she alleged were detrimental delays and were influenced by the respondent's collusion with the bankruptcy trustee.

There was a notice of opposition which was filed on 29th November 2024 by the first respondent who took issue with (1) the fact that the application did not meet

the threshold requirements for permission to appeal to His Majesty in Council set out under the Order; (2) the applicant had no standing to bring the application following the Court's order of 31st July 2024; (3) the application was out of time, procedurally defective and deficient; (4) the applicant was in breach of several court orders and she does not approach this Court with clean hands.

Having considered the application, the notice of opposition, the written and oral submissions advanced by the parties today, the Court was in complete agreement that the proposed appeal did not disclose an issue of great general or public importance, rather the application set out a list of complaints which while they may have been of importance to the applicant, did not give rise to an issue of great general or public importance or otherwise. None of the proposed grounds actually related to the order of 31st July 2024 either in substance or otherwise. The Court further noted that the 31st October 2024 order was a case management decision which flowed as a natural consequence from the order of 31st July 2024 hereinafter referred to as the "locus standi order" in which this Court found that the applicant lacked the requisite standing to bring this appeal. In light of this, the Court found that any successful appeal of the 31st October 2024 order would have the effect only of returning the appeal to the position immediately before that order, to the position where the applicant found herself as a result of the locus standi order which found that she lacked the standing to pursue the appeal. In the event that she was successful on this application and in fact was successfully able to prosecute her appeal before the Privy Council, the applicant would essentially be right back at the point where it is that she lacked the requisite locus and consequently any pending appeal would have to meet the same fate, be struck out for want of prosecution.

The Court was therefore satisfied that the applicant was misconceived and that any possible appeal did not have the requisite merit and did not meet the requisite threshold under section 3(2)(a) of the Order. Accordingly, the Court was satisfied that the

application should be dismissed. Costs were awarded to the respondent to be assessed.

Case Name:

Caldicott Worldwide Limited

v

[1.] Siong Beng Seng

[2.] Ching Hui Huat

**[3.] Springfield Investment &
Nominees Pte Ltd**

[BVIHCMAP2023/0009]

(Territory of the Virgin Islands)

Date:

Tuesday, 25th March 2025

Before:

The Hon. Mde. Vicki Ann Ellis, Justice of Appeal

The Hon. Mde. Petra Nicola Byer, Justice of Appeal

[Ag.]

The Hon. Mr. V. Dexter Theodore, Justice of Appeal

[Ag.]

Appearances:

Applicant:

Mr. Stephen Moverley Smith KC with Mr. Dhanshuklal Vekaria

Respondent:

Mr. Timothy Collingwood KC and Mr. Iain Tucker

Issues:

Motion for conditional leave to His Majesty in Council - Permission to appeal the order and judgment made by the Court of Appeal on 18th September 2024 - Section 3(2) of the Virgin Islands (appeals to privy council) Order 1967 - Whether this is an appropriate case for the Court of Appeal to grant leave to appeal pursuant to section 3(2)(a) of the 1967 Order - Whether this appeal raised matters of great general or public importance or otherwise which justify consideration by the Privy Council - Challenges to findings of fact and law made by the Court of Appeal - The interplay between arbitration clauses and the Court's jurisdiction

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved

Case Name: [1.] Elvin Hodge
[2.] Ethelyne Hodge King
V
The Registrar of the High Court
[BVIHCVAP2024/0002]
(Territory of the Virgin Islands)

Date: Tuesday, 25th March 2025

Before: The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]
The Hon. Mr. V. Dexter Theodore, Justice of Appeal
[Ag.]

Appearances:
Appellant: Ms. Marie-Lou Creque and Ms. Nia Belgrave
Respondent: Ms. Shonice Warner

Issues: Civil Appeal - Appeal against decision of the Registrar of the High Court - Probate proceedings - Preliminary issue - Jurisdiction of the Court of Appeal - Whether the Court of Appeal is the appropriate forum to determine a matter sought to be dealt with by way of case stated - Whether the decision of the registrar was unreasonable and erroneous on a point of law in that the registrar erred in her application of rules 61 and 62 of the Probate Rules - Requirement for advertisement for second grants - Whether the advertising was excessive and unnecessary as the Probate Rules do not require advertising in second grants and the initial

grant was some ten years prior - Validity of the acknowledgment of service filed by the caveator - Whether the acknowledgment of service is a nullity

Type of Order: N/A

Result / Order: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Darwin Blyden
v
[1.] Benedicta Samuels
(Administratrix of the Estate of
Abraham Blyden, deceased)
[2.] Estelle Wheatley
[BVIHCVAP2023/0005]
(Territory of the Virgin Islands)

Date: Tuesday, 25th March 2025

Before: The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Gerard St. C Farara, Justice of Appeal [Ag.]
The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Sydney Bennett KC with him Ms. Anthea L. Smith
Respondent: Ms. Akilah Anderson for the first respondent
No appearance for the second respondent

Issues: Application for an extension of time to file submissions - Civil Appeal - Appeal against decision of learned master to dismiss the appellant's

application to amend the claim form and statement of claim - Adjournment

Type of Order:

Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The Registrar of the High Court is hereby ordered to make available to the Court and the parties copies of the transcript of the proceedings before the learned master on 21st June 2023 on or before Monday 31st March 2025.**
- 2. The said transcript shall be form part of the Record in this appeal.**
- 3. The further hearing of the appeal is adjourned to the next sitting of the Court of Appeal scheduled for the Commonwealth of Dominica during the week commencing 7th April 2025.**

Reason:

Before the Court was an appeal filed by the appellant on 22nd April 2024 challenging the decision of the learned master dated 21st June 2023 where she dismissed the application made by the appellant to amend the statement of claim. Prior to the hearing the respondent made an application for an extension of time to file submissions. The application was unopposed, and the Court granted said application. Subsequently the Court noted that the transcript of proceedings was not provided through no fault of the appellant. The Court determined that the matter should not proceed without copies of transcript of the oral ruling and the reasons for the master's decision. The Court therefore ordered that the Registrar of the High Court shall make available copies of the transcript and adjourned the matter for further consideration to the next sitting of the Court of Appeal in the Commonwealth of Dominica.

Case Name:

Earl Hodge

v

[1.] The Commissioner of Police

[2.] The Senior Magistrate

**[BVIHCVAP2025/0001]
(Territory of the Virgin Islands)**

Date: Wednesday, 26th March 2025

Before: The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]
The Hon. Mr. Anthony Gonsalves, Justice of Appeal
[Ag.]

Appearances:

Applicants/Respondents:	Ms. Nicosie Dummett and Ms. Abayna Devonish
Respondent/Appellant:	No appearance

Issues: Application to strike out notice of application for leave to appeal - Whether the matter should be struck out for want of prosecution

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The notice of application for leave to appeal filed on 8th July 2015 is struck out for want of prosecution.

Reason: Before the Court was an application filed on 9th May 2024 by the respondents to strike out for want of prosecution the notice of application for leave to appeal filed on 8th July 2015 by the appellant, Earl Hodge.

The Court considered the documentation filed by the applicant in support of the application, including proof that the applicant for leave Earl Hodge in fact died on

9th February 2021 and was satisfied that the said Earl Hodge, while alive, took no steps to prosecute his application for leave to appeal and no steps had been taken since his death to proceed with the application.

The Court was therefore satisfied that the strike out application ought to be granted and that the notice of application for leave to appeal filed on 8th July 2015 should be struck out for want of prosecution.

Case Name:

**The King
v
[1.] Pamphill Prevost
[2.] Simon Power

[BVIHCRA2022/0001]
(Territory of the Virgin Islands)**

Date:

Wednesday, 26th March 2025

Before:

**The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]
The Hon. Mr. Anthony Gonsalves, Justice of Appeal
[Ag.]**

Appearances:

**Appellant: Mr. Sandip Patel KC with him Ms. Kellee-Gai Smith

Respondents: Mr. Terrence Williams KC with him Ms. Karlene Thomas-Lucien for the first respondent

Mr. Israel Bruce for the second respondent**

Issues:

Criminal appeal - Conspiracy - s. 52 of the Criminal Procedure Act - Appeal against acquittal of offence of conspiracy to steal contrary to section 311 (1) of the Criminal Code 1997 - No Case Submission - Whether the learned judge erred in upholding the respondents' no case submission - Whether the learned judge incorrectly applied the law and the evidence led in the

appellant's case - Whether the learned judge erred in excluding aspects of vital evidence in the prosecution's case - Unfavourable and Hostile Witnesses - Whether the learned judge erred in law by failing to discharge the jury upon learning that a witness was charged with perjury and perverting the course of justice - The second limb in R v Galbraith - application of evaluative exercise and judicial discretion - Whether the judge erred in principle – Principles upon which an appellate court can review the decision of trial judge to uphold a non case submission and direct the jury to return verdicts of no guilty on the indictment

Type of Order:

Directions

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The parties are to file and exchange written submissions within 14 days of the date of this order not exceeding 7 pages addressing specifically, 'the correct approach as a matter of principle to be adopted by an appellate court on hearing an appeal against a trial judge's decision on a no case to answer submission involving, particularly, the judge's evaluation of the evidence adduced at that stage of the trial.'
2. Judgment is reserved.

Reason:

Upon hearing the submissions from the parties, the Court was of the opinion that the parties should file written submissions addressing specifically, 'the correct approach as a matter of principle to be adopted by an appellate court on hearing an appeal against a trial judge's decision on a no case to answer submission involving, particularly, rgw judge's evaluation of the evidence adduced at that stage of the trial.' Therefore, the Court gave directions for the filing of same and reserved judgment in the matter.

Case Name: **Telecommunication Regulatory Authority
v
Caribbean Cellular Telephone Authority et al**

**[BVIHCVAP2022/0003]
[BVIHCVAP2022/0004]
[BVIHCVAP2022/0005]
(Territory of the Virgin Islands)**

Date: **Wednesday 26th – Thursday 27th March 2025**

Before: **The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. V. Dexter Theodore, Justice of Appeal
[Ag.]**

Appearances:

Appellant: **Mr. Terrance Neale with him Mr. Lawrence Neale and
Ms. Nelcia St. Jean**

Respondents: **Mr. Sydney Bennett KC with him Ms. Anthea Smith for
the 1st respondent
Mr. Nigel Fleming KC and Mr. Paul Dennis KC with
them Ms. Asha Johnson Willins and Ms. Catherine
Dobson for the 2nd respondent
Mr. Brian Childs and Mr. Richard Hickson for the 3rd
respondent**

Issues: **Civil Appeal - Application for an adjournment -
Unavailability of appellant's lead counsel who is based
in London - Whether there would be prejudice to the
respondents if an adjournment is granted**

Type of Order: **Oral Decision**

Result / Order: **IT IS HEREBY ORDERED THAT:**

1. The application for an adjournment of the appeal is granted.
2. The appeal is adjourned for hearing at a date to be fixed by the Chief Registrar in consultation with the parties.
3. The appellant shall pay the respondents' costs thrown away to be assessed by the Chief Registrar if not agreed within 21 days.

Reason:

Before the Court was an application filed on 24th March 2025 for an adjournment of the hearing of the appeal. The grounds of the application were that: 1.) leading counsel for the appellant, due to a delay in receiving further instructions on appearing in the appeal, would no longer be available to argue the appeal that he would not have sufficient time to prepare; 2.) the appellant would not have sufficient time to instruct alternative lead counsel to argue the appeal; 3.) the respondents would suffer no great prejudice from the adjournment of the appeal since the High Court granted their judicial review application prohibiting the appellant from taking any steps to collect the Industry Levy under section 59 of the Telecommunications Act, 2006; and 4.) the appellant has throughout the process of the appeal, been anxious to progress the appeal arguing for an urgent hearing.

The application was resisted by the respondents. The first respondent filed a notice of opposition with a supporting affidavit on 25th March 2025 while the second and third respondents filed their notices of opposition on 26th March 2025. In summary, they oppose the application on the ground that there are no good reasons for the application and that Mr. Neale, who had conduct of the matter in the proceedings below, was competent to prosecute the appeal.

The Court noted that on an application for an adjournment, the Court is asked to exercise its discretion and in doing so, it must act judicially in a manner that promotes the attainment of the overriding objective to deal with cases justly in the circumstances of the case. This, the Court observed, called for a balancing exercise, weighing the prejudice to the parties if the application is granted or refused.

In performing this exercise, the Court considered the reasons advanced for the adjournment and although admittedly made late, the Court was of the view that it would be more prejudicial to the appellant to refuse the application than it would be to the respondents. The Court also considered that the issues raised in the appeal were of great public importance and was of the view that the Court would benefit from the input of leading King's Counsel on both sides, especially since the appellant made it clear that they wish to retain King's Counsel with specialty in the relevant area of law. The Court considered that the justice of the case could properly be met with an appropriate costs order.

Case Name:

**Sancus Financial Holdings Limited
v
Chad Christopher Holm**

**[BVIHCMAP2024/0020]
(Territory of the Virgin Islands)**

Date:

Thursday, 27th March 2025

Before:

**The Hon. Mr. Mario Michel, Chief Justice [Ag.]
The Hon. Mr. Anthony Gonsalves, Justice of Appeal [Ag.]
The Hon. Mr. Reginald Armour, Justice of Appeal [Ag.]**

Appearances:

Appellant/Respondent: No appearance

Respondent/Applicant: Mr. Oliver Clifton and Ms. Colleen Farrington

Issues:

Application for leave to appeal - Application for stay of order - Whether the applications and appeal should be dismissed as liquidators have been appointed in the appellant company and there is no one on record to prosecute the applications or the appeal

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. To the extent necessary the respondent is permitted to defend the Leave and Stay Application.**
- 2. The Leave and Stay Application is hereby dismissed.**
- 3. The costs of the Leave and Stay Application are to the Respondent to be assessed by a judge as costs in the liquidation.**

Reason:

UPON the order of the Honourable Justice Wallbank dated 24th July 2024 appointing liquidators (the "Joint Liquidators") to Sancus Financial Holdings Limited (the "Company") and dismissing the Company's application for an adjournment of the hearing of the application to appoint liquidators (the "Order").

AND UPON the application dated 2nd August 2024 by the Company, together with a certificate of urgency seeking an order for leave to appeal paragraph one of the Order dismissing its application to adjourn the hearing of the application to appoint liquidators, and seeking an order for an interim stay of the Order pending the determination of its appeal (the "Leave and Stay Application") in the proceedings herein.

AND UPON the notice of opposition filed herein by Chad Holm (the "Respondent") on 14th August 2024 in relation to the Leave and Stay Application.

AND UPON the application dated 23rd August 2024 by the Respondent seeking an order for an extension of time to file his evidence and submissions in response to the Leave and Stay Application (the "EOT Application")

AND UPON the notice of acting dated 16th September 2024 herein by Carson Wen and Julia Fung

AND UPON the order of the Court dated 24th September 2024 granting the Respondent's EOT Application and directing that the Leave and Stay Application be set down for hearing before the full court on a date to be fixed by the Chief Registrar

AND UPON the orders of the Honourable Justice Mithani dated 22nd January 2025 appointing trustees in bankruptcy (the "Trustees") to the estates of Carson Wen and Julia Fung, the bankrupts

AND UPON the Leave and Stay Application being listed for hearing in the week commencing 24 March 2025

AND UPON the application dated 10th March 2025 by Carey Olsen (BVI) L.P. seeking an order to be removed from the record as legal practitioners of the Company (the "Removal Application") and the order of the Court dated 18th March 2024 granting the Removal Application

AND UPON the Respondent demonstrating to the Court by the exhibited letters from Counsel for the Trustees and Counsel for the Joint Liquidators that the Trustees and the Joint Liquidators do not oppose the terms of the order herein

AND UPON hearing Oliver Clifton and Colleen Farrington for the Respondent, and there being no appearance for the Company or the Joint Liquidators, or the Trustees, it was ordered that the Leave and Stay Application be dismissed with costs to the respondent in the liquidation.

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 Appellants)

[7.] Chau Cheuk Wah, Angus

[8.] Vanway International Group Limited

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

Date: Thursday, 27th March 2025

Before: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Esco L. Henry, Justice of Appeal
The Hon. Mr. V. Dexter Theodore, Justice of Appeal
[Ag.]

Appearances:

Appellants: Mr. David Quest KC with him Mr. Ian Tucker and Mr.
Renell Benjamin

Respondents: Mr. Jern Fei Ng KC with him Mr. James Bailey, Mr. Jerry
Samuels and Ms. Alecia Johns

Issues: Commercial appeal - Case management powers of the
Court to decide order in which the appeals should be
heard - Whether the extant appeal filed on 27th
December 2023, that was filed first in time should be
heard before the set aside appeal that was filed on 1st
January 2025- Adjournment

Type of Order: Directions/Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is adjourned pending the hearing and determination of the Set Aside appeal.
2. The appellants shall file and serve the record of appeal on or before 17th April 2025.
3. The appellants shall be at liberty to file a reply to the respondents' submissions on or before 17th April 2025.
4. The parties shall collaborate to ensure that the hearing bundles are filed on or before 24th April 2025.
5. The Chief Registrar shall reserve two days for the hearing of both appeals in the next sitting of the Court of Appeal for the Territory of the Virgin Islands in June 2025.
6. The costs of today's proceedings shall be costs in the cause.

Reason:

The Court noted that the extant appeal was filed on 27th December 2023 against the order of Wallbank J dated 14th November 2023, following a trial on quantum in which the appellants were absent. It was further noted that the said notice of appeal stated that in the alternative and without prejudice to the appellants' position, that the order of 14th November 2023 should be set aside. The Court further noted that the appellants promptly applied on the 11th December 2023 for the judge to set aside the said order, but the decision on that said application was not given until 30th April 2024. However, in the interim, a single judge of this Court had granted the appellants' application to stay the extant appeal pending the determination of the set aside application. On 15th April 2024, the appellants filed an application for leave to appeal the judge's dismissal of the set aside application and again applied on 21st June 2024 to stay the extant appeal pending the determination of the leave to appeal application.

On 3rd January 2025, Wallbank J granted the appellants leave to appeal the decision dismissing the set aside application, and pursuant to said leave, the appellants duly filed a notice of appeal in BVIHCMAP2025/0003.

On 7th February 2025, the first case management hearing was held in the extant appeal.

Upon considering that CPR Part 25 enjoins the court to actively manage cases, which also includes deciding the order of issues to be resolved and determining the order in which issues are to be tried pursuant to CPR 26.1(2)(d); these case management powers are available to the Court of Appeal by virtue of CPR 62.24(1), which provides that the case management powers set out in CPR Parts 25 to 27 apply to the management of an appeal case. CPR 62.24(1) also provides that in relation to an appeal, the Court of Appeal has all duties and powers of the High Court, including the powers set out in Part 26.

While the general rule is that the first in time will usually be dealt with first, the Court in the exercise of its case management powers, can determine to deal with an application or an issue first although not first in time where logically this is the only sensible and practical course. See St. Kitts Nevis Anguilla National Bank Limited v Caribbean 6/49 Limited SKNHCVAP2000/0006 (delivered 31st March 2003, unreported).

The Court was of the view that this is such a case, in that if the set aside appeal is resolved in favour of the appellants, then this appeal will be rendered otiose because the orders of 14th November giving rise to it will be set aside. If this appeal proceeds first and it is resolved against the appellants, the set aside appeal will be rendered nugatory to the detriment of the appellants who might then succeed on the set aside appeal resulting in an order for the said order to be set aside as a trial should not have taken place in the absence of the appellants. There can be no logical basis for the Court to proceed in this way. No fault can be attributed to either side, who have both incurred expenses in preparing for the appeal, including travelling to the British Virgin Islands. However, this consideration must be subjugated to the overriding objective.

For these reasons, the Court decided to adjourn the appeal pending the determination of the Set Aside

appeal and gave directions for the progression of the appeal.

Case Name:

**Jose Arturo Faulkner Ramirez
v
Commissioner of Police**

**[BVIMCRAP2023/0002]
(Territory of the Virgin Islands)**

Date:

Friday, 28th March 2025

Before:

**The Hon. Mde. Vicki Ann Ellis, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]
The Hon. Mde. Kimberly Cenac-Phulgence, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Nia Belgrave

Respondent: Ms. Tiffany R. Scatliffe

Issues:

Magisterial Criminal appeal - Section 30 of the Road Traffic Act Cap 218 Revised Laws of the Virgin Islands - Appeal against the finding of guilt of driving without reasonable consideration for other persons using the road - Whether the decision of the learned magistrate was unreasonable and was erroneous as legal evidence substantially affecting the merits of the case was rejected or disregarded by the court - Whether the learned magistrate erred in his determination of guilt - Whether the learned magistrate failed to distinguish between the appellant's act of transporting improperly secured materials and driving without consideration for others

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. There is no order as to costs.

Reason:

The appeal before the Court filed on 21st April 2023 by notice of appeal by the appellant is against the decision and finding of guilt and conviction of the learned magistrate on a charge of driving without reasonable consideration for other persons using the road, pursuant to section 30 of the Road Traffic Act Cap 218 of the Revised Laws of the Territory of the Virgin Islands as amended.

The maximum penalty on summary conviction for that offence is now a fine of \$500.00. The learned magistrate imposed a fine of \$250.00 on the appellant.

In the notice of appeal, the appellant set out 4 grounds of appeal. The Court considered the said grounds, the written submissions filed on behalf of the appellant, both the initial submissions and reply submissions, as well as the written submissions filed by the respondent. The Court also considered the oral submissions by counsel for the appellant. For the reasons which the Court has articulated in exchanges with learned counsel for the appellant, the Court was of the opinion that there is no merit in the appeal. Therefore, the Court dismissed the appeal.

Case Name:

Bridge Holdings International Corp.

v

Keran Taneja

[BVIHCMAP2024/0025]

(Territory of the Virgin Islands)

Date:

Friday, 28th March 2025

Before:

The Hon. Mr. Trevor M. Ward, Justice of Appeal

The Hon. Mde. Petra Nicola Byer, Justice of Appeal

[Ag.]

**The Hon. Mr. Reginald Armour, Justice of Appeal
[Ag.]**

Appearances:

Applicant: Mr. Khamaal Collymore

Respondent: No appearance

Issues:

**Application for leave to appeal - Whether the intended appellant has a realistic prospect of success on appeal
- Whether the learned just misconstrued the Mediation Agreement as being unrelated to the administration, management and conduct of affairs of Bridge Holdings**

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED:

- 1. The application for leave to appeal filed on 10th October 2024 is granted.**
- 2. The notice of appeal shall be filed within 21 days of the date of this order, thereafter the matter shall proceed in accordance with the Civil Procedure Rules (Revised Edition) 2023.**

Reason:

Before the Court was an application filed on 10th October 2024 seeking leave to appeal the decision of the learned judge in the court below setting aside permission previously granted to serve the claim form on the respondent.

After considering both the oral and written submissions from counsel for the applicant, the Court was of the view that the applicant had met the threshold for a grant of permission to appeal, i.e. that the applicant presented a realistic prospect of success on appeal. The Court therefore granted leave to appeal and provided directions for the filing of the notice of appeal.

Case Name:

Renova Industries Limited et al
v
Emmerson International Corporation et al
[BVIHCMAP2020/0008]
(Territory of the Virgin Islands)

Date: Friday, 28th March 2025

Before: The Hon. Mr. Trevor M. Ward, Justice of Appeal
The Hon. Mde. Petra Nicola Byer, Justice of Appeal
[Ag.]
The Hon. Mr. Reginald Armour, Justice of Appeal
[Ag.]

Appearances:

Appellant via Zoom:	Mr. Andrey Titarenko
Respondent via Zoom:	Ms. Arabella Di Lorio

Issues: Interlocutory appeal - Willful failure to prosecute appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed for want of prosecution.
2. The appellant shall pay the respondents, costs to be assessed by a judge of the Commercial Court if not agreed within 21 days.

Reason: Upon BVIHCMAP2020/0008 being called for hearing before the Court, the appellant, who was initially present, by his own volition chose not to participate in the appeal and absented himself from the proceedings. These circumstances, the Court highlighted, constituted a willful failure to prosecute

the appeal. Accordingly, the appeal was dismissed for want of prosecution.