

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
TERRITORY OF THE VIRGIN ISLANDS
VIDEO CONFERENCE
SPECIAL SITTING
Friday, 26th January 2024

APPLICATIONS AND MOTIONS

Case Name: **Andrey Titarenko**

v

Appleby (BVI) Limited

[BVIHCMAP2021/0035]
(Territory of the Virgin Islands)

Date: **Friday, 26th January 2024**

Coram: **The Hon. Mde. Margaret Price Findlay, Justice of Appeal**
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: **In person**

Respondent: **Mr. Andrew Willins**

Issues: **Application for leave to appeal to His Majesty in Council**

Type of Order: **Oral Decision**

Result/Order: **IT IS HEREBY ORDERED THAT:**
1. The notice of application filed on 30th May 2022
for leave to appeal to His Majesty in Council

against the decision of this Court made on 9th May 2022, or alternatively, that the Court sets aside the said order pursuant to its inherent jurisdiction or rectify its errors in procedure pursuant to CPR 26.9 is dismissed in its entirety.

2. Costs of the application to the respondent, Appleby, to be assessed by a judge of the commercial court if not agreed by the parties within 14 days.

Reasons:

Before the Court was a Notice of Application filed by Mr. Andrey Titarenko on 30th May 2022 in which Mr. Titarenko applied for leave to appeal to His Majesty in Council against the decisions of this Court made on 9th May 2022 or alternatively, he applied pursuant to CPR 26.9 and in exercise of the inherent jurisdiction of the Court to set aside the order made on 9th May 2022. In relation to the application to set aside the order of 9th May 2022, the Court was not satisfied that the applicant had provided any basis upon which the said order ought to be set aside. In relation to the application for leave to appeal to the Privy Council, the Court was not satisfied that the applicant, Mr. Titarenko had met the threshold for the grant of conditional leave to appeal to His Majesty in Council from the order of 9th May 2022 in that there were no issues raised that satisfied the requirement in section 3(2) of the 1967 Order, of great general or public importance nor were there any other good reasons advanced why the matter ought to be allowed to be appealed to the Privy Council.

Case Name:

Andrey Titarenko

v

- (1) Emmerson International Corporation**
- (2) Alexei Moskov**
- (3) Mikhail Abyzov**
- (4) Fresko Financial Limited**

[BVIHCMAP2021/0033]
(Territory of the Virgin Islands)

Date: Friday, 26th January 2024

Coram: The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondents: Mr. Robert Weekes, KC with him Ms. Colleen Farrington and Mr. Renell Benjamin on behalf of the 1st, 3rd and 4th respondents

Mr. Andrew Willins for 2nd respondent

Issues: Application for leave to appeal to His Majesty in Council

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

1. The notice of application filed on 30th May 2022 for leave to appeal to His Majesty in Council against the decision of this Court made on 9th May 2022, or alternatively, that the Court sets aside the said order and order the legal practitioners acting for the 1st, 2nd and 4th respondents to pay wasted costs pursuant to the Court's inherent jurisdiction or pursuant to CPR 26.9 stands dismissed in its entirety.
2. Costs of this application filed on 30th May 2022 to be paid by Mr. Titarenko to the respondents, that is the 1st, 2nd, 3rd and 4th respondents, such costs to be assessed by a judge of the Commercial Court if not agreed within 14 days.

Reason: This was an application filed on 30th May 2022 by Mr. Andrey Titarenko. In that application, Mr. Titarenko applied to the Court of Appeal for leave to appeal to His Majesty in Council against the decisions of the Court

made on 9th May 2022 or alternatively, he applied to the Court of Appeal under CPR 26.9 and/or the Court's inherent jurisdiction to set aside the order of the Court made on 9th May 2022 and to make a costs order that the legal practitioners acting for the 1st, 2nd and 4th respondents pay on a wasted costs basis, the parties' costs thrown away as a result of the adjournment of the hearing on 9th May 2022, of what he described in the notice of application as the 'Walkers Appeal Matter'.

The Court considered the grounds of the application as set out in the notice of application itself and also considered the notice of appeal which was filed by the applicant, Mr. Titarenko, and the certificate of result of the applications heard on 9th May 2022 as reflected in that certificate which formed part of the hearing bundle.

Having considered the oral submissions made by Mr. Titarenko in support of this application and also the submissions made on behalf of the 1st, 3rd and 4th respondents by Mr. Weekes KC and on behalf of the 2nd respondent by Mr. Willins, the Court was, first of all, not satisfied that the applicant had demonstrated any circumstances, reasons or issues why the Court should set aside the order of 9th May 2022 and go on to make a wasted costs order against the 1st, 2nd and 4th respondents. Accordingly, that limb of the application was dismissed.

In relation to the alternative limb of the application, that is, the application for conditional leave to appeal to the Privy Council, having considered the matters which Mr. Titarenko raised in order to seek to demonstrate and to satisfy the Court that these raised issues of great general or public importance or that there was some other good reason why the Court ought to permit the matter to be appealed to the Privy Council, and having considered the learning in the case law, some of which was set out in the written skeleton arguments of the respondents as to what are questions of great or general importance such that leave to appeal ought to be granted to appeal to the Privy Council and also in particular the question of whether there was some issue of law or of procedure which could benefit from guidance from the Privy Council, the Court was not satisfied that the applicant had met the threshold for the

grant of leave to appeal to His Majesty in Council in relation to any of those three limbs of section 3(2) of the 1967 Order. Accordingly, the disposition of that limb of the application was that that too ought to be dismissed.

Case Name:

Andrey Titarenko

v

**(1) Emmerson International Corporation
(2) Alexei Moskov
(3) Mikhail Abyzov
(4) Fresko Financial Limited**

**[BVIHCMAP2021/0033]
(Territory of the Virgin Islands)**

Date:

Friday, 26th January 2024

Coram:

**The Hon. Mde. Margaret Price Findlay, Justice of Appeal
The Hon. Mr. Eddy Ventose, Justice of Appeal
The Hon. Mr. Gerard Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondents:

**Mr. Robert Weekes, KC with him Ms. Colleen Farrington
and Mr. Renell Benjamin on behalf of the 1st, 3rd and 4th
respondents**

Issues:

**Application to vary, discharge or revoke order of single
judge**

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The notice of application filed on 29th April 2022
seeking a variation, discharge or revocation of**

the order of Michel JA dated 14th April 2022 and the orders sought therein stands dismissed.

2. Mr. Titarenko, the applicant, shall pay the costs of the 1st, 3rd and 4th respondents in relation to this application, such costs to be assessed by a judge if not agreed by the parties within 14 days.

Reason:

In this appeal, the applicant Mr. Andrey Titarenko filed an application on 29th April 2022. In that application, the applicant applied pursuant to CPR 62.16A to the Court of Appeal, as the application stated: “to vary the order of the Honourable Mario Michel, Justice of Appeal, made on 14 April 2022 in relation to the applications made by the 1st, 3rd and 4th respondents (“the Emmerson Parties”) on 18th and 24th February 2022 for extension of time to file their written submissions in opposition to the Appeal”.

In presenting the application, Mr. Titarenko effectively argued that the order made by Michel JA on 14th April 2022 ought to be revoked on the grounds set out in his application. The specific order of Michel JA dated 14th April 2022 was concerned with an application made by the 1st, 3rd and 4th respondents for an extension of time within which to file their skeleton arguments. In the recitals to that order, it was noted as follows: “The skeleton argument of the 1st respondent [was] filed on 4th March 2022”.

It was also noted in that order that “the notice of opposition [was] filed by the appellant on 4th March 2022 resisting the application for an extension of time” and as the order went on to recite, it was noted that “the 1st, 3rd and 4th respondents (sic) affidavit evidence that the delay in filing skeleton arguments in accordance with the Civil Procedure Rules 2000 is owing to the fact that the transcript of proceedings has not been prepared and made available to the parties and that the appellant has not filed skeleton arguments in support of the appeal”.

It was also recited in the order that the Court considered that the transcript of proceedings had not been prepared and the Court also considered its powers under rule 26.1(2)(k) of the Civil Procedure Rules 2000.

Finally, the order recited that upon the learned judge being satisfied that the 1st, 3rd and 4th respondents had met the threshold for the grant to them of an extension of time to file their skeleton arguments in opposition to the appeal, “it is hereby ordered that the 1st, 3rd and 4th respondents are granted an extension for filing their submissions in opposition to the appeal and secondly, that the said respondents shall file their written submissions together with authorities on or before 28th April 2022”. That was the order with respect to which the application filed by Mr. Titarenko on 29th April 2022 sought either to vary, discharge or to have revoked.

The Court heard submissions from Mr. Titarenko in support of the application and also heard the submissions from learned counsel for the 1st, 3rd and 4th respondents in opposition to the application, the 1st, 3rd and 4th respondents having filed written submissions. The Court gave careful consideration to all the submissions made by the respective parties and it was the Court’s determination that the notice of application filed on 29th April 2022 by Mr. Titarenko did not disclose any basis upon which the order of Michel JA dated 14th April 2022 should be varied, discharged or revoked.

Further, the Court determined that this was not an appropriate instance in which this Court should order that the applicant/appellant’s costs be paid by the respondents.