

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

TERRITORY OF THE VIRGIN ISLANDS
VIDEOCONFERENCE
4th – 8th October 2021

JUDGMENTS

Case Name:

[1] Nam Tai Property Inc
[2] IsZo Capital LP
v
[1] Greater Sail Limited
[2] West Ridge Investment Company
Limited

[BVIHCMAP2021/0010]
(Territory of The Virgin Islands)

Date:

Monday, 4th October 2021

**Coram for
delivery of
judgment:**

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of
Appeal
The Hon. Mr. Gerard St. C. Farara, QC, Justice of
Appeal [Ag.]

Appearances:

Appellants:

Mr. Matthew Hardwick, QC, with him Ms. Rosalind
Nicholson

Respondent:

Mr. Edward Davies, QC with him Mr. Ben Griffiths and
Mr. Nicholas Burkill for IsZo Capital;
Mr. Vernon Flynn QC for Greater Sail

Issues:

Commercial appeal – Proper purpose – Section 121
of Business Companies Act – Duty of directors to
exercise powers for a proper purpose – Section
120(1) of Business Companies Act – Duty of directors

to act honestly and in good faith and in the best interests of the company – Whether allotment of shares by directors was for improper purpose in breach of section 121 of the Business Companies Act – Whether Private Investment in Public Equity (PIPE) was for purpose of capital raising to deal with an urgent liquidity crisis – Whether purpose of the PIPE was board entrenchment rather than raising capital – Approach of trial court in determining purpose – Approach by trial court in determining the subjective intention of the directors when voting to approve the PIPE – Whether NTP was facing an urgent liquidity crisis – Whether the directors were genuinely concerned that lender banks were entitled to and would call in their loans leading to an urgent liquidity crisis in NTP – Appellate interference with trial judge's findings of fact and inferences from the evidence – Rule 62.4 of the Civil Procedure Rules 2000 – Whether NTP appealed against the trial judge's finding on breach of the section 120(1) duty – Fresh evidence – Principles in Ladd v Marshall – Principles in R (Iran) v Secretary of State for the Home Department — Whether banks' post judgment demands provides compelling evidence that undermine judge's finding of no urgent liquidity crisis – Whether judge failed to assess evidence of urgent liquidity crisis against NTP's pleaded case – Whether judge erred in his evaluation and analysis of chronology of events in relation to the liquidity crisis – Whether judge failed to take into account the relevant timeline in his evaluation of the liquidity crisis - Whether judge erred in finding the evidence of NTP's witnesses including the four directors who voted for the PIPE unreliable – Whether judge erred in finding of improper purpose by four directors who voted to approve the PIPE – Whether judge failed to take into account the written note of Dr. Tam in evaluating evidence of urgent liquidity crisis and purpose – Whether judge's finding of no urgent liquidity crisis was plainly wrong and ought to be set aside and appellate court decide on purpose afresh in all the circumstances

Result/Order:

Held: dismissing the appeal, affirming the judgment and orders of the court below; and ordering that NTP and GSL pay IsZo's costs of NTP's appeal in proportions of 80 percent by NTP and 20 percent by GSL, such costs being no more than two-thirds of IsZo's costs in the court below; dismissing the counter-appeal and making no order as to costs; making the orders set out at paragraphs 285-288; and granting the fresh evidence application in the terms set out at paragraph 73, that:

- 1. An appellate court ought not to interfere with findings of fact made by a trial judge, unless compelled to do so. This is because a trial judge, having seen and heard the witnesses give their evidence and being cross-examined, enjoys a distinct advantage over an appellate court when it comes to assessing the credibility of witnesses and the reliability of aspects of their evidence given at the trial, and in making findings of fact and drawing reasonable and appropriate inferences from such findings. However, where a trial judge has not properly exercised his or her unique position and has either failed to evaluate or to properly take into account important evidence or has reached findings in reliance on an incorrect evaluation of the evidence, or omitted to take into account important relevant evidence, or his conclusion on the evidence is erroneous or plainly wrong, an appellate court ought not to hesitate to intervene and to set aside such findings.**

Group Seven Ltd v Nasir [2019] EWCA Civ 614 applied; Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 applied; Henderson v Foxworth Investments Ltd [2014] UKSC 41 considered; Pleshakov v Sky Stream Corporation and others [2021] UKPC 15 considered; Watt (or Thomas) v Thomas [1947] AC 484 considered.

- 2. An appellate court must be mindful of the important and laudable principle that cases are to be decided on the evidence led at trial so as to bring finality to litigation. Therefore, the**

Ladd v Marshall principles must be applied with rigour and the appellate court must be satisfied that the three limbs of the test are met before a fresh evidence application, in an appeal, can be granted. In this case, the evidence sought to be adduced by the appellant, comprising of four bank demand letters issued after delivery of the judgment below, were not in existence and thus not available for use at the trial. Such evidence can only be admitted on appeal in exceptional circumstances, examples of which are set out in R (Iran) and Ors v Secretary of State for the Home Department. While not strictly satisfying the first of the Ladd v Marshall principles, the four post-judgment demand letters do satisfy the second and third limbs of these principles. Furthermore, the four post-judgment bank demand letters may be admitted as new evidence, as they could arguably be said to undermine the judge's primary findings that the lender banks were not entitled to call-in their respective loans and that no urgent liquidity crisis existed with NTP when the PIPE was approved by the Board on 5th October 2020. Moreover, it is also arguable that these four bank demand letters could support the judge's findings on this important issue which would equally also be a good reason for this Court exercising its discretion to admit them. Therefore, in the interest of justice, the four post-judgment bank demand letters are admitted as new evidence together with a copy of NTP's annual report for fiscal year ending 31st December 2020 - US SEC Form 20-F.

Ladd v Marshall [1954] 1 WLR 1489 applied; R (Iran) and Ors v Secretary of State for the Home Department [2005] EWCA Civ 982 considered; Hadmor Productions Ltd v Hamilton [1983] AC 191, 220D considered.

- 3. A notice of appeal which does not specify, as challenged, each and every finding of fact or of law does not offend rule 62.4(1)(b) of the Civil Procedure Rules 2000 and, accordingly, does**

not exclude or prevent a challenge by an appellant to any other findings of fact or law not expressly challenged in the notice of appeal. What is crucial is that the notice of appeal must give details of the decision, which is being appealed, identifying so far as practicable, any finding of fact and of law, which the appellant seeks to challenge. NTP, in its notice of appeal, did expressly challenge the judge's conclusion in paragraph 166 of a breach of section 120(1) of the Act. The judge's conclusion at paragraph 166 of a breach of duty by the four directors under section 120(1) of the Act was, to a large extent, parasitic upon his earlier primary finding of no urgent liquidity crisis and his conclusion of improper purpose in breach of section 121. Accordingly, NTP's appeal challenges the judge's findings of breach of duty by the four directors in approving the PIPE in relation to both section 121 and section 120(1). Further, in light of the broad powers under section 31(2) of the Eastern Caribbean Supreme Court (Virgin Islands) Act, the Court is empowered to make any order which it thinks just to ensure the determination on the merits of the real question in controversy between the parties, notwithstanding that any finding of fact or of law or ground for allowing or for affirming or for varying any decision of the lower court is not specified in the notice of appeal or in the respondent's notice.

Rule 62.4 of the Civil Procedure Rules 2000 applied; Sheikh Mohamed Ali M Alhamrani et al v Sheikh Absullah Ali M Alhamrani BVIHCMAP2016/0030 (delivered 24th November 2017, unreported) applied; Section 31(2) of Eastern Caribbean Supreme Court (Virgin Islands) Act Cap. 80, Revised Laws of the Virgin Islands applied.

4. In order to find that the directors had, in voting to approve the PIPE, breached their duty under section 120(1) of Act to act honestly and in good faith and in what they believe to be in the

best interest of the company, IsZo must first have pleaded each of these three elements, and must have conducted their case at trial on the basis that these directors were acting dishonestly, without good faith and not in the best interests of NTP and its shareholders, when they so voted. IsZo's case as pleaded was not based upon all three limbs of section 120(1). Further, IsZo's case at trial, as the judge correctly observed, was not conducted or based upon allegations of dishonesty by the four directors or that they were lying, but principally, if not exclusively, (the "paired down" case) on the basis that the real purpose in voting to approve the PIPE was not capital raising, but ensuring Kaisa's effective control of NTP and defeating the requisition. It was therefore not open to the court to find any breach of duty under section 120(1) and the judge was wrong in law to do so. Accordingly, the judge's finding of a breach of section 120(1) duty is set aside.

Section 120(1) of Business Companies Act 2004 Act No. 4 of 2004 applied.

5. The test for whether directors acted for an improper purpose under section 121 of the Business Companies Act 2004 is the dominant or substantial purpose test.

Antow Holdings Limited v Best Nation Investments Limited and Others [2018] ECSCJ No. 253 (delivered 18th September 2018).

6. In determining what was the subjective intention or purpose of those making a particular decision which is within their statutory powers, a judge must apply an objective approach to the assessment of the evidence before him. This exercise involves a careful examination of all the relevant surrounding circumstances and reliable evidence, oral or documentary, which point to or may assist in a proper determination of their subjective intention or purpose when they

made the decision being impugned. An important piece of evidence in this evaluative process, though not conclusive, is the evidence of the directors themselves as to their intentions when they so voted. This evidence must be weighed against other contemporaneous actions, statements, documents and surrounding circumstances which, individually or collectively, shed some light on the true intention of the directors. In conducting this exercise, a judge must also caution himself that management and commercial decisions are matters for the directors, and it is not for the court to substitute its own assessment or view of the risk, prudence or reasonableness of the decision itself.

Howard Smith Ltd v Ampol Petroleum Ltd [1972] 2 NSWLR 850 considered; Hindle v John Cotton Ltd (1919) 56 SCLR applied; Independent Asset Management Company Limited v Swiss Forfeiting Ltd [2017] ECSCJ No. 271 (delivered 24th November 2017) considered; Antow Holdings Limited v Best Nation and Others [2018] ECSCJ No. 253 (delivered 21st September 2018) considered.

7. While, in relation to the judge's first basis for finding that an urgent liquidity crisis had not been made out, he was entitled to consider and to reject the evidence adduced on behalf of NTP as to the existence or likelihood that NTP was facing an urgent liquidity crisis. The judge erred in not specifically identifying and evaluating evidentially whether, the directors had a 'real concern' that the lender banks were entitled to demand repayment of their loans, and that they would do so imminently, as pleaded by NTP in its defence. The judge was not satisfied on the evidence from the letters of concern issued by each of the lender banks in late September 2020 that any of them were entitled to call in their loans. The judge also rejected the evidence of Dr. Tam that such an entitlement arose from the letters of concern

issued by the lender banks in which they expressly reserved their right to do so. The judge correctly concluded that an express reservation of such rights does not, without more, give rise to an actual entitlement to do so or that the said banks were in fact going to call in their loans. In light of the judge's failure, in his evaluation of the evidence, to address his mind as to whether the directors of NTP had a real concern that the lender banks were entitled to call-in their loans, it is open to this Court to reach its own conclusion on this issue.

8. The learned judge's conclusion that XIB had not raised any issues about its loan facilities with NTP and accordingly such concerns about a change in effective control of NTP were not universal (his second basis), was incorrect on the evidence before him. However, having a concern (the level and seriousness of which is also a matter for assessment) and acting upon it, are two different matters. The evidence disclosed that there was universal concern among the five lending banks (including XIB) in mid to late September 2020 regarding the public activism of IsZo and the requisition, and what impact these events could or may have for NTP going forward, and for the timely repayment of the banks' respective loans. It follows that the judge was wrong to find that such concern was not universally held among the five lending banks.
9. The judge found, as his third basis, that the loans by BOB, CEB and IB were comparatively trivial loans and, if necessary, could easily be paid off from NTP's cash reserves, therefore these could not contribute to a cash crisis. It is clear that NTP had, in late September 2020, cash reserves sufficient to pay in full the loans from these three banks should it have become necessary for it to do so. While the judge ought not to have described these loans as 'trivial', each being for quite substantial sums, he clearly did so by way of comparison with the

much larger loan sums owed to BOC and SRCB. It is also clear, that even after NTP had repaid the SRCB loan in full, it had the cash reserves to pay in full the three smaller BOB, CEB and IB loans if it became necessary to do so. This would leave only the much larger BOC loan, which itself was reduced substantially by the part payment made on 12th November 2020. Accordingly, NTP's challenge to the judge's third reason for not accepting that NTP was facing an urgent liquidity crisis in late September 2020 is misconceived.

10. The judge's fourth basis for his finding of no urgent liquidity crisis, is that BOC, the largest lender, was the best secured as the Inno Park project was nearing completion. In giving this fourth reason, the judge ought to have exercised some caution. This is because the question of which of the legal steps or recourses available to a lender bank it may elect to take or put into action at any given point in time to secure repayment of its loan, including realisation of its security, is a matter for the particular lender bank to assess and to determine, taking its own best interest into account. These are not issues for a court to speculate about, but are matters best suited for BOC as the lender bank, and for the directors and management of NTP to negotiate for itself. However, the judge in this fourth reason for his finding of no urgent liquidity crisis, put it no higher than that BOC's position, as a secured creditor, made it 'less likely' that it would be disturbed by a change in management of NTP. In putting it this way, the judge did not usurp or trespass upon the purview, judgment and authority of the directors of NTP.
11. The judge's fifth basis for finding that no urgent liquidity crisis had been made out is one which is correct as a matter of applicable banking law and is not in dispute. It is common ground that NTP had no legal obligation, whether as a borrower or a guarantor, or as the provider of security for any of the bank loans,

to repay the sums borrowed by its wholly owned subsidiaries. The important question is whether it was open to the judge to rely on this lack of legal recourse by the lender banks against NTP itself, as a basis for finding that NTP was not faced with an urgent liquidity crisis in late September 2020. This finding was not immaterial to the question of whether NTP itself was faced in late September 2020 with an urgent liquidity crisis, absent any legal obligation to repay any of these loans. However, implicit in the judge's characterisation of this 'immunity' from direct recourse as giving NTP a 'significant bargaining power' with the lender banks, is the practical and commercial reality that were the loans to be called in to the subsidiaries and not paid, NTP, while not being legally obligated to repay them, would be faced with making payment in order to prevent a financial crisis with its subsidiaries and adverse consequences to the value of its traded stock. In this fifth reason, the judge did not allude to or consider these practical and commercial realities in his reasoning and analysis. Nor did he take into account that on the evidence it was NTP which had repaid, from its cash reserves, the SRCB loan in September 2020 and had made a substantial partial payment to BOC in November 2020.

Howard Smith Ltd v Ampol Petroleum Ltd [1972] 2 NSWLR 850 considered.

12. The conclusions reached on NTP's challenges to each of the judge's five bases or reasons for finding no urgent liquidity crisis had been made out, and whether, on the evidence adduced, the directors had a real concern that the lender banks were entitled to call-in their loans, are not dispositive of the issue of whether the judge's finding of no urgent liquidity crisis was erroneous or plainly wrong, such that it ought to be set aside and a finding of an urgent liquidity crisis or the reasonable likelihood of such a crisis substituted. The final

determination as to NTP's challenges to the judge's finding and conclusion of no urgent liquidity crisis and improper purpose, hinges also on a determination of whether the judge failed or omitted to consider and to take into account certain key events in the factual chronology and timeline in his evaluation of the liquidity crisis and its urgency; and also on the alleged failure by the judge to take into account the so-called contemporaneous late September 2020 written note of Dr. Tam relating to the various alternatives or options to the PIPE considered at that time.

Co-Operative Group (CWS) Ltd v International Computers Ltd [2003] EWCA Civ 1955 considered.

13. Where a trial judge is giving judgment or a decision in a matter, particularly after a trial in which there were witnesses of fact, fairness and the demands of justice require that the trial judge must produce a well-reasoned judgment addressing all the relevant issues, factual and legal, which fall for the court's determination. However, it is not a requirement that a judgment must deal with each and every point raised by the parties, whether of law or of fact, or with every argument or submission relied on by counsel for the parties. What is of critical importance is that the judgment must demonstrate that care was taken by the judge in his assessment and evaluation of the admitted evidence as to its cogency, reliability, and relevance. In this case, the judge adequately conducted an assessment and evaluation of the evidence, particularly as it relates to the issues of an urgent liquidity crisis facing NTP and the purpose of the directors in approving the PIPE and allotment of shares.

Simetra Global Assets Limited & others v Ikon Finance Limited & others [2019] EWCA Civ 1413 applied.

14. Having reviewed the totality of the evidence and the applicable principles which ought to guide a court when determining the subjective intentions of directors in making a decision on behalf of a company, this Court is not satisfied that Dr. Tam and or the four directors who voted to approve the PIPE and allotment of shares, had a real or reasonable concern, at that time, that the lender banks were entitled to and were very likely going to demand immediate repayment of their loans, causing NTP to face an urgent liquidity crisis in late September or on 5th October 2020 when the PIPE was approved, plunging NTP into financial crisis and insolvency. From all the surrounding circumstances, including the failure by the directors, in breach of their duty under the company's articles of association, to act on the validly issued requisition by IsZo and the other shareholders, the judge's conclusion that an urgent liquidity crisis had not been made out by NTP is a conclusion which was open to him on the totality of the evidence, having seen and heard the witnesses.
15. The judge's approach to the timeline and chronology of events in the judgment cannot be assailed. The judge did consider much of the relevant evidence in the chronology which predates the requisition. The judge was correct to consider, in greater depth and to attach more importance evidentially, to the events occurring in late September after the requisition, which was NTP's pleaded case as to when the urgent liquidity crisis is said to have arisen. This the judge did both by examining the reliability and credibility of each of the witnesses for NTP, particularly as to when the urgent liquidity crisis is said to have arisen such as to warrant consideration of capital raising and a PIPE. The judge evaluated the events of the second half of September, including the notices from each of the lender banks expressing their concerns, and the demand for repayment by SRCB on 23rd

September 2020. He also took into account the demand for and receipt of a partial repayment on the BOC loan in November 2020 after approval of the PIPE. Accordingly, NTP's challenges based upon the alleged omitted events fails.

Simetra Global Assets Limited & others v Ikon Finance Limited & others [2019] EWCA Civ 1413 applied.

16. In assessing and evaluating the cogency and seriousness of the alleged purpose for which the four directors voted to approve the PIPE, the judge was required to assess the nature and quality of the evidence led by NTP's witnesses, including Dr. Tam and the four directors, as to the existence, seriousness and urgency of the liquidity crisis, so as to determine objectively what was the subjective intention of each of the said four directors. It follows, therefore, that the judge, as the trier of fact, did not err in his approach to the evidence of Dr. Tam as to the risk or seriousness of the liquidity crisis, and in determining that, in all the circumstances, he had exaggerated the risk of the alleged liquidity crisis and, in doing so, his evidence was open to question and was therefore unreliable on this critical issue of fact.

17. There is no discernible error in the judge's assessment of the evidence, credibility and reliability of the four directors who voted to approve the PIPE. In relation to the evidence of three of the four directors, the judge concluded that their subjective intention or purpose was to ensure that Kaisa would have de facto control of NTP and to defeat the requisition. He concluded that, based on their experience as directors and the obvious practical effect of the PIPE on the voting power of Kaisa which effect they had either denied or avoided answering, their lack of forthrightness and candour undermined their credibility and reliability as witnesses, and consequently, the value and

cogency of their evidence as to the genuine purpose for which they voted to approve the PIPE. In so far as it relates to the fourth director Dr. Lo, whom the judge found to be somewhat credible, the judge concluded, correctly, that his admitted purpose was to ensure that the change in the Board proposed by the requisitionists failed. These findings were open to the judge on the evidence. Therefore, there is no basis upon which this Court can or ought to interfere with these findings.

18. In relation to the Dr. Tam's September 2020 written note, there is no evidence that the note was written immediately or very shortly after the meeting at which he and Mr. Wan had discussed and rejected three options to a PIPE. Accordingly, Dr. Tam's September note was not a contemporaneous note in the true sense. The evidence was that Dr. Tam used this note as an aide-memoire or speaking note during the meetings of the audit committee and of the Board on 5th October 2020, of which meetings there are minutes admitted into evidence before the judge. It follows, therefore, that Dr. Tam's September note does not add anything to the question of what was in fact discussed at the said meetings leading to approval of the PIPE. Also, Dr. Tam's written note does not add anything to the evidence he gave in his witness statement as to the three options he had discussed with Mr. Wan and their rejection of them on the basis of lack of time. Accordingly, the omission by the judge to refer to this note and to treat it as a contemporaneous document was of no consequence.

Case Name:

**Grenada Rice Mills
v
Grenada Marketing and National Importing
Board**

**[GDAHCVAP2015/0002]
(Grenada)**

Date:

Wednesday, 6th October 2021

**Coram for
delivery of
judgment:**

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

Appearances:

Appellant: Ms. Skeeta Chitan

Respondent: Ms. Lisa Taylor

Issues:

Civil appeal – Without prejudice rule – Whether without prejudice rule must be pleaded – Whether it was open to learned judge to hold that the respondent’s letter was privileged – Whether negotiations were ongoing when letter was sent to appellant – Whether letter amounted to an admission by respondent of monies owed to the appellant – Appellate court’s interference with trial judge’s finding of fact – Trial judge’s assessment of credibility of witnesses – Whether learned judge misconstrued appellant’s case – Whether learned judge erred and misdirected herself in holding that there was no agreement for the respondent to purchase rice from the appellant

Result/Order:

Held: dismissing the appeal; and ordering that the appellant pay the respondent the costs of this appeal in the sum of \$4,266.66 being two-thirds of the costs awarded below, that:

1. Where a party seeks to base his case or part of it on a statement made during negotiations, the other party, the author of the statement, could object to the admission of the statement. This is usually done by an application to strike out. However, in this case, where the issue of admission of the sums owed by the Marketing Board contained in the letter of 21st June 2001 arose during cross-examination, it was open to the Marketing Board to contend that the document was privileged by virtue of the 'without prejudice' rule in their submissions to the learned judge.

Oceanbulk Shipping & Trading SA v TMT Asia Limited and others [2010] UKSC 44 applied; Berkely Square Holdings and Others v Lancer Property Asset Management and Others [2020] EWHC 1015 (Ch) applied; Ofulue and another (FC) v Bossert (FC) [2009] UKHL 16 applied.

2. The 'without prejudice' rule dictates that communication between parties during negotiations are privileged and are therefore inadmissible in court proceedings unless both parties consent. A document written 'without prejudice' that is part of a continuing sequence of negotiations, whether by correspondence or orally, will be privileged and therefore cannot be given in evidence without the consent of both parties, subject to exceptions. In light of this and having regard to the evidence that was before the learned judge, it was open to the learned judge to find as she did, that the 'without prejudice' rule applied. While there was documentary evidence in support of the negotiation between the parties, there was no direct evidence that negotiations had ended or evidence from which it could reasonably be inferred that the negotiations had ended during the time that the Marketing Board's letter dated 21st June 2001 was sent to GRM. In sum, the learned judge did not err in ruling that the letter was a privileged document and therefore inadmissible.

Dixons Stores Group Ltd. v Thames Television plc [1993] 1 All ER 349 considered; Cutts v Head and another [1984] Ch. 290 applied; Unilever plc. v The Procter & Gamble Co. [2000] 1 WLR 2436 applied.

3. In view of the finding above, GRM's submission that the letter dated 21st June 2001 amounted to an admission must therefore fall away. In any event, on a proper construction, the letter shows that the Marketing Board was rejecting rather than agreeing that, there was or had been an agreement of sale between the parties. The letter did not amount to an admission of sums due and owing to GRM as contended.

4. It is well settled that an appellate court will only interfere with a judge's finding of fact where it is demonstrated that the learned judge made some material error of law or there was no basis on the evidence for the finding of fact or the judge failed to consider relevant evidence, or where the findings of fact cannot reasonably be explained or justified. Further, where the issue is one of credibility of witnesses, the appellate court will exercise caution, bearing in mind that the trial judge is in a privileged position to assess the witnesses' credibility. The judge had the opportunity to both see and hear the witnesses. Therefore, where there is conflicting evidence the judge's view of which witnesses were credible should be given great weight. In this case, where there was conflicting evidence, the learned judge having had the benefit of hearing and seeing the witnesses was entitled to determine their credibility. As such, the learned judge's view of which witnesses were credible should be given great weight.

Clarke v Edinburgh and District Tramways Co. Ltd [1919] UKHL 303 applied; Watt (or Thomas) v Thomas [1947] SC (HL) 45 applied; Ming Siu Hung and others v J F Ming Inc and another [2021] UKPC 1 applied.

5. The learned judge was also entitled to conclude that GRM could not recover the selling price of the rice since there was no general agreement to purchase rice and there was no agreement to purchase rice in September 1998 or between December 1998 and March 1999. The agreement in September 1998 was for payment in kind being the recovery of rice from the Marketing Board shipment

and payment of the milling fees. There was no agreement for rice to be transferred to the Marketing Board between December 1998 and March 1999 since the Marketing Board stocks were not depleted, they had rice in stock. The learned judge carefully analysed the evidence of the witnesses for both parties and she outlined her reasons why she did not accept the evidence of GRM's witness. Both sides agreed rice was to be loaned by GRM to the Marketing Board when the Marketing Board's stocks were depleted and GRM would recover the rice. GRM was the owner and had full control of the silos where all rice was stored. The agreement was for payment in "kind" and the milling fees. The learned judge awarded GRM milling fees she found to be outstanding. There is therefore no basis to interfere with the learned judge's finding of facts.

Case Name:

**[1] Emmerson International Corporation
[2] Mikhail Abyzov**

v

**[1] Viktor Vekselberg
[2] Gothelia Management Limited
[3] Integrated Energy Systems Limited**

**[BVIHCMAP2021/0004]
(Territory of the Virgin Islands)**

Date:

Wednesday 6th October, 2021

**Coram for
delivery of
judgment:**

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances: Appellants:

Ms. Renell Benjamin

Respondents: Ms. Arabella di Lorio for the 1st and 3rd respondents

Issues: Interlocutory appeal — Anti-suit injunction — Worldwide freezing order (WFO) — Exercise of discretion by a judge — Whether the judge erred by failing to find that Mr. Vekselberg has de jure or de facto control of some of the Cyprus Claimants to direct them to withdraw the Cyprus proceedings and the WFO — Whether the judge erred by failing to find that the Cyprus proceedings are vexatious or oppressive — Whether the judge erred by failing to find that there was sufficient overlap between the Cyprus claim and the BVI claim, that the Cyprus claim has a real or substantial connection with the BVI, and that the BVI is clearly the natural and appropriate forum for trying the Cyprus claims — Whether Mr. Vekselberg was in breach of his assurance to the BVI court that he has not commenced and has no intention to commence any proceedings in any jurisdiction against the appellants which relate to the issues to be determined in the BVI proceedings — Whether the judge could have granted anti-suit relief in relation to the WFO only without granting relief in respect of the Cyprus proceedings — Whether the judge erred by declining to take into account that the Cyprus claimants committed serious and material non-disclosures in applying for and obtaining the WFO — Whether the judge erred in not finding that the WFO was an impermissible interference with the receiver appointed by the BVI court and did not cause prejudice to the appellants — Whether the judge was wrong not to take account of the complete absence of any provision in the WFO dealing with the extraterritorial effect of the order

Result/Order: IT IS HEREBY ORDERED THAT:

Held: dismissing the appeal and ordering the appellants to pay the respondents' costs of the appeal to be assessed at no more than two-thirds of the amount awarded in the court below unless such costs are agreed within 21 days of the date of this judgment, that:

1. The granting of an anti-suit injunction is an exercise of discretion by the judge hearing the application and the role of the Court of Appeal in reviewing the exercise of that discretion is limited. The test is in two stages – (i) the trial judge must have made an error, and (ii) as a result his or her decision was outside the generous ambit of reasonable disagreement or was blatantly wrong.

West Indies Associated States Supreme Court (Virgin Islands) Act Cap 80, Revised Laws of the Virgin Islands applied; *Dufour and Others v Helen Air Corporation Ltd and Others* (1996) 52 WIR 188 followed; *Hadmor Productions and others v Hamilton* [1983] 1 A.C. 191 at 220 followed; *Ming Siu Hung and others v J F Ming Inc and another* [2021] UKPC 1 followed.

2. The application for an anti-suit injunction must show that (i) the court has personal jurisdiction over the person to be restrained; (ii) that the injunction, if granted, will be in the best interests of justice; and (iii) that commencing or continuing the foreign proceeding is vexatious or oppressive or will interfere with the process of the BVI court. The requirement of vexatious or oppressive conduct must be decided on a case-by-case basis. In determining whether the commencement or continuation of the foreign proceeding is vexatious or oppressive the court will look at (i) whether the claim is entirely lacking in merit or bogus; (ii) the overlap between the issues in the BVI proceeding and the foreign proceeding; (iii) the impact, if any, of the injunction on the principles of international comity; (iv) the conduct of the parties; and (v) all the circumstances of the case.

Elektrim SA v Vivendi Holdings 1 Corp; *Law Debenture Trust Corp plc v Vivendi Holdings 1 Corp* [2009] 2 All ER (Comm) 213 considered; *Masri v Consolidated Contractors International (UK) Ltd and others (No 3)* [2009] QB 503 considered; *Kenneth M. Krys et al v Stichting Shell Pensioenfonds BVIHCVAP2011/036* (delivered 17th September 2012, unreported) followed; *Stichting Shell Pensioenfonds v Krys and another* [2015] AC 616 followed; *Deutsche Bank AG and another v Highland Crusader Offshore partners LP and others* [2010] 1 WLR 1023 considered.

3. In considering whether to restrain a party from commencing or continuing proceedings in a foreign court the local court can consider the merits of the foreign proceedings, but (i) it is only one of the factors to be considered, (ii) it should only be decisive where on the face of it the foreign claim is hopeless, bogus or entirely without merit, and (iii) all the circumstances, including international comity, must be considered in deciding whether to exercise discretion by granting an injunction. The judge reviewed the Cyprus claim and decided that on its face it was not bogus, hopeless or entirely without merit. He did not, and was not required to, decide the merits of the claim. He correctly concluded that the merits of the claim are best judged by the Cyprus court in the context of the full range of the evidence in the claim.

Société Nationale Industrielle Aerospatiale v Lee Kui Jak and another [1987] AC 871 considered; *Midland Bank plc and another v Laker Airways Ltd. and others* [1986] QB 689 considered; *Peruvian Guano Co. v Bockwoldt* (1883) 23 Ch. D. 225 considered; *Deutsche Bank AG and another v Highland Crusader Offshore partners LP and others* [2010] 1 WLR 1023 considered; *Masri v Consolidated Contractors International (UK) Ltd and others* (No 3) [2009] QB 503 distinguished; *Elektrim SA v Vivendi Holdings 1 Corp*; *Law Debenture Trust Corp plc v Vivendi Holdings 1 Corp* [2009] 2 All ER (Comm) 213 distinguished.

4. Mr. Vekselberg does not have, directly or indirectly, a controlling interest in T Plus Invest and KES-Holding. Further, these companies are not BVI companies and are not parties to the BVI proceedings. The learned judge found correctly that the BVI court does not have jurisdiction over these parties and that there was no evidence that Mr. Vekselberg had sufficient control of KES-Holding and T Plus Invest to order him to cause them to withdraw the Cyprus proceedings. Therefore, T Plus Invest and KES-Holding could continue the Cyprus claim without Brookweed, Gothelia and IES Cyprus and it would be pointless to grant the anti-suit injunction sought against the respondents. Moreover, the addition of a best endeavours clause to the order would not cure the

fundamental defect that it was refused by the judge and by this Court for lack of evidence, and making the order would not serve a useful purpose.

Emmott v Michael Wilson and Partners Limited [2018] 2 All ER (Comm) 737 considered; Société Nationale Industrielle Aerospatiale v Lee Kui Jak and another [1987] AC 871 considered.

5. There is no evidence of the extent, if any, of the reduction of the value of the Cyprus claim if it is discontinued by Brookweed, Gothelia and IES Cyprus and therefore this cannot form a basis for interfering with the judge's decision. Further, if an applicant is not entitled on the evidence to an anti-suit injunction it is not logical that his entitlement would improve because the value of the claim against him is reduced. The fact that the value of the claim has a consequential effect on the monetary cap of the WFO is a part of the practice regarding the granting of such injunctions.

6. The judge's findings that the claims are 'completely different', that the Cyprus claim has no connection with the BVI, and that the BVI is not the appropriate forum for the trial of the Cyprus claim are all based on evidence that was before the court. In this case the issues do not overlap and the BVI is not the natural or appropriate forum for the trial of the issues in the Cyprus claim. There is no basis for this Court to interfere with the judge's findings.

Masri v Consolidated Contractors International (UK) Ltd and others (No 3) [2009] QB 503 considered; Elektrim SA v Vivendi Holdings 1 Corp; Law Debenture Trust Corp plc v Vivendi Holdings 1 Corp [2009] 2 All ER (Comm) 213 considered.

7. The judge considered the non-disclosures and in his discretion he left the final determination of their effect to the Cyprus court. It cannot be said that he committed an error of principle in not finding that the disclosures made the Cyprus claim vexatious or oppressive.

8. Mr. Vekselberg was the only member of the Renova parties before the court when the assurance

was given and is the only person referred to in the undertaking. None of the companies that he controls were parties to the litigation. Therefore, the judge to whom the undertaking was given and who has had conduct of the majority of the proceedings in the BVI litigation, cannot be faulted for finding that the assurance was not breached by the continuation of the Cyprus proceedings which were not commenced and are not being conducted by entities that are controlled by Mr. Vekselberg. Further, the issues in the Cyprus proceedings are completely different from the issues in the BVI proceedings. As such, the judge did not err in his interpretation and treatment of the assurance.

9. Despite acknowledging the risk of the WFO interfering with the receiver appointed by the BVI court, the judge found, as he was entitled to do, that there was no evidence of actual interference or damage to the appellants and in all the circumstances of the case, he did not regard this as a sufficient ground for granting the anti-suit injunction. This was an exercise of discretion by the judge taking a holistic view of the application which does not warrant appellate interference.

10. The judge could have made an order in respect of the WFO only. However, in a new development after the hearing of the appeal, the receiver filed a Notice of Completion of the Receivership confirming that the receivership of Emmerson had been completed and was at an end. This means that the potential for interference with the order of the BVI court appointing the receiver is no longer a live issue in this appeal and it is not necessary to make an order regarding the receivership.

11. In all the circumstances of this case, the failure to include a Babanaft proviso in the WFO is not sufficiently serious to warrant the grant of an anti-suit injunction. Issues like the width of the WFO can be resolved by the Cyprus court which has jurisdiction in this matter.

Case Name:

**[1] Norton Gaspard
[2] Elfridge Gaspard
[3] Heirs of Evariste Gaspard
(Represented by Vivianne Gaspard-
Aimable)
v
Bernard Isidore**

**[SLUHCVAP2020/0010]
(Saint Lucia)**

Date: **Thursday, 7th October 2021**

**Coram for
delivery of
judgment:** **The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Horace Fraser

Respondent: Mr. Alvin St. Clair

Issues: **Civil appeal – Registration of Title - Section 22 of the
Land Adjudication Act – Jurisdiction of Adjudication
Officer - Whether adjudication officer had jurisdiction to
review initial decision before adjudication record was
finalized – Section 98 of Land Registration Act – Mistake
in registration of title - Rectification of Land Register**

Result/Order: **Held: dismissing the appeal; and ordering that the
appellants pay the respondents costs on the appeal to
be no more than two-thirds of the prescribed costs
awarded in the court below, that:**

**1. The adjudication officer is given a substantive
power of review under section 22 of the LAA and this
power is part and parcel of the adjudication process and
is among the arsenal of powers which was available to
the adjudication officer in carrying out the mandate of
the LAA.**

Section 22 of the Land Adjudication Act, Cap. 5.06, Revised Laws of Saint Lucia, 2017 considered; *Loopsome Portland et al v Sidonia Joseph Civil Appeal No. 2 of 1992* (delivered 25th January 1993, unreported) applied; *James Ronald Webster and another v Beryl St. Clair Fleming* [1995] ECSCJ No. 32 applied.

2. Under section 22(b), the adjudication officer is vested with the power to make material alterations in the record as he or she considers necessary. There is nothing in section 22 or elsewhere in the LAA which limits the reasons for which the adjudication officer may review and alter his decision. In view of the clear language of the section, there cannot be considered to be any restriction on the power of the adjudication officer to alter any of the contents of the adjudication record referred to in section 18, which includes the name of the person entitled to be registered as the owner, prior to the finalization of the record by the issuance of a certificate of finality of the adjudication record under section 23 of the LAA.

Sections 22(b) and 23 of the Land Adjudication Act, Cap. 5.06, Revised Laws of Saint Lucia, 2017 applied; Section 18 of the Land Adjudication Act, Cap. 5.06, Revised Laws of Saint Lucia, 2017 considered.

3. The only qualification on the adjudication officer's power of review is where he intends to make a material alteration to the adjudication record. In such a case, the principles of natural justice apply and the adjudication officer is only required to take such steps as he deems fit to bring to the notice of every person whose interest is affected his or her intention to make any material alteration in the record which he or she considers necessary, and after giving such person an opportunity to be heard, may make such alteration. In this case, it is undisputed and, in any event, pellucid on the face of the record, that the parties were given an opportunity to be heard by Mr. White on the petition on 12th and 22nd September 1986 and evidence was in fact given on behalf of the appellants.

4. While section 22 of the LAA does not specify how the review process is to be instituted, it cannot be said that only the adjudication officer can institute the review

process. This runs counter to the wide scope of powers vested in the adjudication officer under the LAA. In the circumstances, the learned trial judge was correct in her conclusion that, in view of the broad language used in section 22, the adjudication officer may review and alter the adjudication record of his volition, or equally where some matter is brought to his attention, whether by petition or otherwise. In all the premises, the learned judge was correct in holding that Mr. White had jurisdiction on hearing the parties to review and alter the adjudication record, prior to the finalization of the record, in favour of the Heirs of Zephern pursuant to section 22 of the LAA.

Section 22 of the Land Adjudication Act Cap. 5.06, Revised Laws of Saint Lucia, 2017 applied.

5. The court is empowered to make an order for rectification of the Land Register under section 98 of the Land Registration Act (“the LRA”) on the basis of a mistake which occurred in the registration process. This includes a mistake which has been carried forward into the registration process as a result of a mistake in the adjudication process, but the alleged mistake must not relate to the correctness of the adjudication officer’s decision. This may occur where the adjudication record presented at the Land Registry does not correctly embody the final decision of the adjudication officer. It is clear that the final decision of Mr. White as embodied in his Second Decision and which became the subject of the final adjudication record was not accurately carried over and reflected on the Land Register. This amounted to a mistake in the registration process and rectification was accordingly available. Section 98(1) of the LRA was correctly engaged by the learned judge.

Section 98(1) of the Land Registration Act, Cap. 5.01, Revised Laws of Saint Lucia 2015 applied; *St. Torrence Matty et al v Alicia Francois* SLUHCVP2012/0037 (delivered 21st August 2015, unreported) applied; *Sylvina Louisen v Joachim Rodney* [2009] UKPC 3 applied.

Case Name: [1]Emmerson International Corporation
[2]Mikhail Abyzov
v
Viktor Vekselberg

[BVIHCMAP2020/0011]
(Territory of the Virgin Islands)

Date: Friday, 8th October 2021

Coram for delivery of judgment: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellants: Ms. Colleen Farrington and Renell Benjamin-Walker
Respondents: Ms. Arabella Di Iorio

Issues: Interlocutory appeal - Commercial appeal – Interim injunction – Worldwide anti-suit injunctions – Discretion of judge to grant anti-suit injunctions – Vexatious and oppressive proceedings - Appellate court’s review of trial judge’s exercise of discretion – Whether learned judge applied wrong test for worldwide anti-suit injunction – Whether learned judge erred in considering that principles for antisuit injunctions militated against granting a worldwide anti-suit injunction – Whether learned judge erred in finding no sufficient evidence of bad faith – Assessment of evidence – Whether learned judge erred in assessment of evidence and failed to give reasons for decision – Application to admit fresh evidence – Test for admitting fresh evidence

Result/Order:

Held: dismissing the appeal; refusing the application to adduce fresh evidence; and ordering that the appellants pay the respondents' costs of the appeal to be assessed at no more than two-thirds of the amount awarded in the court below unless such costs are agreed within 21 days of the date of this judgment, that:

1. The three limbs of Ladd v Marshall must be satisfied before an application to adduce fresh evidence can be granted. The second limb is that the court must be satisfied that the new evidence, if admitted, would probably have an important influence on the result of appeal, though it need not be decisive. In this case the new evidence was included in the bundle of documents for the hearing of the appeals and it raises substantially the same or similar issues as in the Cyprus appeal. The application to admit the new evidence is refused because it is unlikely that the evidence would have an important influence on the result of the appeal. The new evidence would involve reconsidering the same or similar issues as in the Cyprus appeal which runs the risk of the Court coming to different conclusions on the same issues.

Ladd v Marshall [1954] 3 All ER 745 applied.

2. The principles applying to anti-suit injunctions apply with greater force when the court is considering an application for a worldwide anti-suit injunction. The court will not inhibit a person's right to bring proceedings overseas unless one of the principles relating to anti-suit injunctions applies such as where foreign proceedings are vexatious or oppressive, or interferes with the court's process or is otherwise unconscionable. In this case, the judge acknowledged that an anti-suit injunction is an extreme remedy that is rarely granted and the discretion to grant such an order must be based on the facts of the case and be exercised with caution. He found that this was not a sufficient or clear case of bad faith or unconscionability by Mr. Vekselberg to warrant a general injunction. Inferentially, the judge must have been satisfied that there was not a real risk that Mr. Vekselberg would commence parallel

proceedings elsewhere. The trial judge could not be said to have adopted a higher standard than is required when considering the order sought in this exceptional application.

Munib Masri v Consolidated Contractors International Company (UK) Ltd & Anor (No 3) [2009] QB 503 distinguished; Kenneth Krys and Joanna Lau v Stichting Shell Pensioenfonds BVIHCVAP 2011/036 (delivered 17th September 2012, unreported) considered; Societe Nationale Industrielle Aerospatiale v Lee Kui Jack [1978] 1AC 871 considered; Adamovsky v Malitskiy BVIHCMAP2014/0031 (delivered 3rd February 2017, unreported) considered; Deutsche Bank AG v Highland Crusader Offshore Partners LLP [2010] 1 WLR 1023 considered; Emmott v Michael Wilson & Partners Ltd. [2018] EWCA Civ 51 considered.

3. The grant or refusal of an interim injunction is a discretionary remedy. An appellate court should not interfere with the decision of a trial judge unless the judge erred in principle and as a result, his or her decision exceeded the generous ambit of reasonable disagreement or was blatantly wrong. In this case, the judge took into consideration that the Russian proceedings had come to an end and the undertakings offered by Mr. Vekselberg not to commence any other claim in Russia against the Abyzov parties, and that there was no evidence from which it could have been reasonably inferred that Mr. Vekselberg intended to start new proceedings on substantially the same issues in any other court. In the circumstances, it could not be said that the judge acted outside the generous ambit of reasonable disagreement or was blatantly wrong in not granting the worldwide anti-suit injunction. There is no basis to interfere with the exercise of his discretion.

West Indies Associated States Supreme Court (Virgin Islands) Act Cap. 80 of the Revised Laws of The Virgin Islands applied; Dufour and Others v Helen Air Corporation Ltd and Others (1996) 52 WIR 188 applied; Hadmor Productions and others v Hamilton [1983] 1 A.C. 191 applied.

4. The proposed addition to the order sought requiring Mr. Vekselberg to apply to a judge in the BVI

for permission to bring proceedings against any of the Abyzov parties is an unreasonable restriction on his undoubted right to commence proceedings overseas and has the effect of reversing the burden of proving that the intended proceedings are not frivolous or vexatious or otherwise an interference with the court's processes. The judge was correct in his finding that the addition of the requirement to get permission did not provide flexibility but instead imposed an unreasonable burden on Mr. Vekselberg.

5. A trial judge is not required to deal with every issue or piece of evidence in the trial. What he or she is required to do is to deal with the important issues and give sufficient reasons for his decision so that the parties can understand why they won or lost (as the case may be). The judge's reasons for dismissing the application are apparent from his judgment. He accepted the undertakings given by Mr. Vekselberg regarding the Russian proceedings, considered the legal principles relating to antisuit injunctions, applied them to the facts and found that on the totality of Mr. Vekselberg's conduct there was insufficient evidence of bad faith or unconscionability to warrant a worldwide injunction.

Emmerson International Corporation v Renova Industries Limited and others BVIHCP2016/0029 (delivered 23rd March 2017, unreported) applied.

APPLICATIONS AND APPEALS

Case Name: David Golden
v
[1]Hu Lan
Respondent

[2]Sundale International Limited
[3]Best Land Investments Ltd
[4]Harneys Corporate Services Limited
[5]Gao Jiaren aka Karl Golden
Defendants

[BVIHCMAP2020/0032]
(Territory of The Virgin Islands)

Date: Monday, 4th October 2021

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. John McCarroll, SC with him Ms. Megan Elms

Respondent: No appearance

Issues: Interlocutory appeal – Commercial appeal –
Withdrawal of appeal – Costs – Rule 37.6(1) of the
Civil Procedure Rules 2000 – Liability for costs in
circumstances where there is a discontinuance or
withdrawal – Whether in the circumstances this
Court should disapply rule 37.6(1) – Whether
appellant entitled to costs

Type of Order:	Oral judgment
Result:	IT IS HEREBY ORDERED THAT: With the leave of the Court, the appeal is discontinued with no order as to costs.
Reason:	The appellant made an application to withdraw the appeal.
Case Name:	[1] Treehouse Investments Limited [2] GACH Holdings Limited v [1] Carl Stuart Jackson [2] Andrew Hosking [3] Simon Bonney [4] Greig Mitchell (In their capacity as joint Liquidators of Unicorn Worldwide Holdings Limited (in Liquidation), Ballaugh Holdings Limited (in Liquidation) Sulby Investment Holdings Limited (in Liquidation) and Glen Moar Properties Limited (in Liquidation)) [BVIHCMAP2021/0015] (Territory of The Virgin Islands)
Date:	Monday, 4th October 2021
Coram:	The Hon. Dame Janice M. Pereira, DBE, Chief Justice The Hon. Mde. Louise Esther Blenman, Justice of Appeal The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]
Appearances:	
Appellants:	Mr. John McCarroll SC with Ms. Megan Elms

Respondent: No appearance

Issues: Commercial appeal – Leave to appeal – Withdrawal of application for leave to appeal

Type of Order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

Having regard to the leave granted to appeal in respect of the second leave application in BVIHCMAP2021/0020 and considering that it covers the issues raised in this leave application, this leave application is hereby withdrawn.

Reason: The application for leave was hereby withdrawn given that leave was granted to appeal in respect of the second leave application in BVIHCMAP2021/0020 and that it covers the issues raised in this leave application.

Case Name: [1] Sheikha Amena Ahmed H.A. Al-Thani (also known as Amena Ahmed Al-Thani)
[2] Sara Saoud M.A Al-Thani

v

[1] Sheikha Aisha Mohammed Ali Abdullah Al-Dehaimi (also known as Ayesha Mohamed Ali Alabdullah Al Thani)
[2] Sheika Al-Anoud Abdulrahman Ali Al Abdullah AL Thani (also known as Al Anoud Abdul Rahman Mohammed Al Thani)
[3] Sa'ad Al-Dehaimi (Also known as Saad Abdullah Obaid Shurtabl Al Dhaimi)

[BVIHCVAP2021/0001]

(The Territory of the Virgin Islands)

Date: Monday, 4th October 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Stephen Moverly-Smith, QC, with him Mr. Dave Marshall

Respondents: Mr. Bajul Shah and Mr. Nicholas Brookes

Issues: Civil appeal – Probate – Wills – Validity and enforceability of will made in Qatar – Whether validity of will to be determined in accordance with law of the domicile of testator – Disposal of movable property in the Territory of the Virgin Islands (“BVI”) – Whether instrument executed and declared valid by Qatari court can be admitted to probate in the BVI – Whether Qatari will enforceable in the BVI – Whether oral entry by testator in a Qatari court sufficient to satisfy the requirements of probate in the BVI – Res judicata by issue estoppel – Estoppel of foreign judgment – Requirements for estoppel of a foreign judgment – Whether issue concerning validity and enforceability of will as raised in the Qatari Court of Appeal identical to issue raised in BVI proceedings – Whether learned judge erred in determining that appellants estopped from contending that the oral entry made by testator in Qatari court is not a valid will in so far as it disposes of moveable property in the BVI – Section 245 of the Business Companies Act 2004 – Whether learned judge erred in concluding that section 245 of the Business Companies Act 2004 did not constitute registered shares in the BVI companies as immovable property

Result/Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**[1] Siong Beng Seng
[2] Ching Hui Huat
[3] Springfield Investments & Nominees
Pte Ltd**

v

Caldicott Worldwide Ltd.

**[BVIHCMAP2021/0007]
(The Territory of the Virgin Islands)**

Date: **Tuesday, 5th October 2021**

Coram:

**The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Dexter Theodore, Justice of Appeal
[Ag.]**

Appearances:

Appellant: **Mr. Timothy Collingwood, QC with him Mr. Lain Tucker**

Respondent: **Mr. Stephen Moverly Smith, QC, with him Mr. James Noble, Mr. Dhanshuklal Vekaria and Ms. Amelia Tan**

Issues:

Commercial appeal – Interlocutory appeal – Unfair prejudice claim – Appeal against decision of learned judge determining that particular claims against appellant fell to be stayed in favour of arbitration – Article 156 of articles of association – Whether judge applied the wrong legal test as to whether particular claims against the appellants fell to be stayed following the stay of proceedings – Whether judge

erred in concluding that the facts supported parallel claims between the parties proceeding at the same time in their respective fora – Whether judge erred in finding that all of the claims for relief against the appellants did not fall to be stayed when a stay of proceedings had been ordered - Whether company's resolution is void or voidable – Whether judge mischaracterized the matter in finding that the allegation that the resolution is void or voidable does not give rise to dispute with company – Whether resolution made in bad faith – Whether the company had an obligation to distribute dividends in the circumstances – Whether or not the claims for declaratory relief should be allowed to continue – Whether or not declaratory relief should be sought in legal proceedings or at arbitration stage – Whether or not members engaged in unfairly prejudicial conduct – Application to adduce fresh evidence – Whether or not notice of arbitration ought to be adduced as evidence before the Court of Appeal

Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Floyd Isaacs

v

Kerry Nichols

[BVIMCVAP2018/0003]

(The Territory of the Virgin Islands)

Date:

Tuesday, 5th October 2021

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mde Gertel Thom, Justice of Appeal

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

Appearances: Appellant: Ms. Stacy Abel

Respondent: Ms. Nadine Whyte-Laing

Issues: Civil magisterial appeal – Damages – Pain and suffering – Whether the learned magistrate was wrong in law for granting damages to the respondent for pain and suffering where there was no medical or other evidence

Type of Order: Oral judgment

Result/Order IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Costs to the respondent agreed at \$800.00.**

Reasons

This is an appeal against the sum of \$3000.00 awarded by a learned magistrate for pain and suffering. The appellant contends that there is no basis upon which the award was made as the case was unsupported by medical or other evidence, the magistrate wrongly exercised his discretion in awarding a nominal sum when the respondent failed to provide evidence in support of his claim for pain and suffering and the decision is unreasonable and cannot be supported having regard to the facts of the case. The amount of an award to be made for pain and suffering cannot be precisely calculated. All that can be done is to award such sum within the broader criterion of what is reasonable in line with similar awards in comparative cases as represents the court's basic estimate of the claimant's damage.

The case before the magistrate was one of assault, and the respondent gave evidence which the magistrate accepted that he was feeling pain in most parts of his body; his head, back, knee and fists were swollen and had some blood. The doctor examined

him and gave him an injection for pain. He returned in three weeks' time as the swelling continued. He got three days off work and another injection. He suffered a lot of back pain and pain in his knee. That went on for close to a month. The magistrate found that he was physically injured and suffered pain as a result of the appellants action. Inevitably, the magistrate had ample evidence which he accepted as the basis for making an award for pain and suffering. The magistrate did not award the amount claimed, that is \$9999.00 as the respondent did not produce a medical report or receipt to prove the sum claimed as a direct result of his injury. The magistrate stated, quite correctly, that the court was not stopped from awarding a sum based on the evidence and the court had the power to make an order for pain and suffering. The magistrate found that the respondent was in significant pain as a result of the assault.

A magistrate can make an award of damages for pain and suffering on the basis of the oral evidence of the claimant in the absence of any medical evidence and the magistrate did make an award given the evidence which she accepted. The bases upon which the magistrate awarded \$3000.00 are well set out in her decision. She accepted the respondent's evidence as to his pain and suffering. It cannot be said that the respondent provided no evidence in support of his claim. Accordingly, the damages awarded was within the discretion of the magistrate and this Court is chary about interfering with an award of damages which commends itself to the judge or magistrate doing the assessment. The assessment was peculiarly within the province of the magistrate and this Court does not find that she erred in principle or made an award that was inordinately low or inordinately high which necessitates appellate interference. The Court was therefore of the view that there is no basis for appellate interference with the award made by the magistrate.

**[1]Amstel Investment Holdings Limited
Claimant/Appellant**

[2]Amstel Investment Holdings Limited

**[3]Christopher Stuart Mckenzie
[4]Cavendish Management Enterprises Limited
Claimants by way of Ancillary
Claim/Appellants**

V

**[1]AMS Holdinggs Limited
Claimant/Respondent
[2]Circle Capital Limited
[3]Sukru Evrengun**

**[BVIHCMAP2021/0016]
(Territory of the Virgin Islands)**

Date: Tuesday 5th October, 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Alex Hall Taylor, QC

Respondent: Ms. Tameka Davis and Ms. Allana-J Joseph

Issues: Application for Extension of Time – Whether the respondents should be granted an extension of time to file their written submissions in response to appeal – Application for permission to amend notice of appeal – Whether the appellants should be granted permission to amend their notice of appeal to add additional grounds

Type of Order: Oral decision

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

1. Paragraph 1 of the order of the court below dated 14th June 2021 is corrected to read: “The application for summary judgment is dismissed”.

2. Paragraph 2 of the order of the court below dated 14th June 2021 is amended to read:
“The applicants shall pay the respondents’ costs of the application for summary judgment to be assessed if not agreed within 21 days.”
3. Based on the intimation from learned counsel for the appellants, the appellants’ application to amend the notice of appeal is withdrawn.
4. Costs on the application to amend the notice of appeal shall be dealt with at the end of the hearing of the appeal.
5. Time is extended to 30th September 2021 for the filing of the respondents’ skeleton argument.
6. Costs of the application to extend time to file skeleton arguments shall be borne by the respondents and paid to the appellants.

Reasons:

The Court noted that it was accepted by counsel on both sides that the learned judge below only dealt with the application for summary judgment, and the other limbs of the application were not heard and therefore not determined by the learned judge. It is also accepted by learned counsel for the parties that when the order itself dismissed the application, by definition it dismissed all limbs of the application and to that extent, the order is incorrect and ought to be corrected.

This Court has considered the powers given to a court, which includes the Court of Appeal under rule 42.10 of the Civil Procedure Rules 2000, to correct, at any time, errors in judgments and orders specifically to correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission. The Court was satisfied, and learned counsel has accepted that there was indeed an accidental error or slip in order as finalised and sealed by the court dated on 14th June 2021, and that the said order ought, in paragraph 1, to have to have stated that the application for summary judgment is dismissed, accordingly, the order that the said paragraph 1 be corrected to read “the application for summary judgment is dismissed”. In relation to paragraph 2 of that order, it is accepted that the costs awarded by the learned judge against the applicant ought only to relate to the application for summary judgment.

Case name:

**[1]Amstel Investment Holdings Limited
Claimant/Appellant
[2]Amstel Investment Holdings Limited
[3]Christopher Stuart Mckenzie
[4]Cavendish Management Enterprises Limited
Claimants by way of Ancillary
Claim/Appellants**

v

**[1]AMS Holdings Limited
Claimant/Respondent
[2]Circle Capital Limited
[3]Sukru Evrengun**

**[BVIHCMA2021/0016]
(Territory of the Virgin Islands)**

Date:

Tuesday, 5th October 2021

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Issues:

Interlocutory appeal — Summary judgment — Refusal of summary judgment — Material issues of fact — Unfairly prejudicial conduct of a director — Improper purpose — Dilution of shares — Whether the learned judge erred by applying the wrong test in determining the summary judgment application — Whether judge erred in not granting summary judgment on the ancillary claim on the basis that the actions of the director were for an improper purpose and were therefore invalid

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Nam Tai Property Inc.

V

IsZo Capital LP

and

Greater Sail Limited

2nd Defendant

West Ridge Investment Company Limited

3rd Defendant

[BVIHCMAP2021/0010]

(The Territory of the Virgin Islands)

Date: **Wednesday, 6th October 2021**

Coram: **The Hon. Dame Janice M. Pereira, DBE, Chief Justice**
The Hon. Paul Webster, Justice of Appeal [Ag.]
The Hon. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Matthew Hardwick QC with him Ms. Rosalind Nicholson and Mr. Renell Benjamin**

Respondents: **Mr. Edward Davies QC, Mr. Ben Griffiths and Mr. Nicholas Burkill for IsZo Capital LP**
Mr. Vernon Flynn QC, Mr. John Carrington, QC, Mr. Gerard Clarke, Ms. Gurprit Mattu and Mr. Andrew Emery for Greater Sail Limited

Issues: **Application for stay of proceedings pending appeal to Privy Council -**

Type of Order: **Oral decision**

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

- 1. Paragraph 4 of the Certificate of Appeal be stayed until after Judgment in the Applications.**

2. The Respondent shall file and serve its evidence in response to the Applications and its written submissions on or before 4pm on Friday, 29th October 2021.
3. The Applications be listed for hearing on 8th November 2021 together with applications in appeal BVIHCMAP 2021/11 with a time estimate of one day.
4. The costs of the hearing on 6th October 2021 are reserved to the hearing on 8th November 2021.

Reason:

The Court noted that the parties were agreed that the appellant do file and serve any application for conditional leave to appeal to Her Majesty in Council which it determines to make, together with an application to stay paragraph 4 of the Certificate of Appeal dated 4th October 2021 ("the Certificate of Appeal") and any application which the appellant determines to make in respect of the Record Date set by paragraph 4 of the Certificate of Appeal and paragraph 1 of the Schedule to the Order of Jack J dated 3rd March 2021 together with any evidence in support and its written submissions on or before 4pm on Monday 18th October 2021.

Nam Tai Property Inc.

v

IsZo Capital LP

and

Greater Sail Limited

2nd Defendant

West Ridge Investment Company Limited

[BVIHCMAP2021/0011]

(Territory of the Virgin Islands)

Date:

Wednesday 6th October 2021

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Paul Webster, Justice of Appeal [Ag.]
The Hon. Gerard St. C. Farara, Justice of Appeal [Ag.]**

Appearances:

Appellants: Mr. Vernon Flynn QC, Mr. John Carrington, QC, Mr. Gerard Clarke, Ms. Gurprit Mattu and Mr. Andrew Emery

Respondents: Mr. Edward Davies QC, Mr. Ben Griffiths and Mr. Nicholas Burkill for the 1st Respondent

Issue: Application for adjournment

Type of Order: Oral decision

Result/Order: IT IS HEREBY ORDERED THAT:

1. The hearing of this appeal is adjourned on condition that the Appellant (if so advised) files and serves an application for conditional leave to appeal in appeal BVIHCMAP 2021/0010 together with any application for a stay pending such appeal (“the Appellants’ applications”) and its skeleton argument in relation thereto by no later than 4pm on Friday 22nd October 2021.
2. The Respondent shall file and serve any evidence in reply to the Appellant’s application(s) together with its skeleton argument no later than 4pm on Friday 29th October 2021.
3. At the time of hearing the applications for conditional leave and stay, the Court will then consider giving further directions for the hearing of the Appellant’s appeal.
4. The Appellant’s conditional leave and stay applications shall be heard by the Court on 8th November 2021 together with any applications in appeal BVIHCMAP2021/0010 with an estimate of one day.
5. Costs of the hearing on 6th October 2021 including costs thrown away by the adjournment are reserved to the hearing on 8th November 2021.

Reason: Counsel for the appellant requested an adjournment on the basis that the Court only very recently laid down its decision in matter, BVIHCMAP2021/0010 which is closely tied to and does have an impact upon the present proceedings. Counsel is seeking time to take further instructions and consider the various implications of the Court’s recent decision.

Case Name: Chinook Wind Alliance Limited

v
The Registrar of Corporate Affairs

[BVIHCMAP2020/0027]
(Territory of the Virgin Islands)

Date: Wednesday, 6th October 2021

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Kimberley Crabbe- Adams and Mr. Romane Duncan

Respondent: Ms. Dian Fahie and Mr. Stephen Grayson

Issues: Commercial appeal - Company Law - Dissolution of company
rescinded and declared void - Restoration of company -
Appointment of receiver - Consent order

Order: IT IS HEREBY ORDERED BY CONSENT THAT:

1. The dissolution of Chinook Wind Alliance Limited (No. 498909) (the Company) on 2nd November 2013 be rescinded and is hereby declared void.
2. The Company be restored to the Register of Companies (the Register) by the Registrar of Corporate Affairs, upon payment of any outstanding fees and penalties pursuant to and in accordance with the BVI Business Companies Act, 2004 (as amended) (the Act).
3. The Company be deemed to have been automatically re-registered under the Act in accordance with Schedule 2, Part III on 1st January 2007.
4. The Company be deemed never to have been dissolved or struck off the Register.
5. Any property which belonged to the Company and which was not disposed of at the date of the dissolution or which was received for the benefit of or on behalf of the Company since its dissolution, that was vested in the Crown, be restored to and do vest in the Company.
6. The Respondent shall upon receipt of the filed and sealed copy of this order issue a certificate of restoration to the Company in

the approved form and that the restoration will have effect from the date and time that the copy of the sealed order is filed.

7. Ms. Anna Silver of FFP (BVI) Limited, 2nd Floor, Water's Edge Building, Wickhams Cay II, Road Town, Tortola VG1110, British Virgin Islands, be appointed a receiver of the Company pursuant to section 24(1) of the West Indies Associated States Supreme Court (Virgin Islands) Act for the purpose of:

(i) accepting the bearer shares in the Company held by the appellant (the Bearer Shares); and

(ii) determining whether the Bearer Shares should be redeemed under paragraph 36 of Division 5 of Schedule 2 to the BVI Business Companies Act (as amended) or to exercise (if she so determines) the Company's power of conversion or exchange of the Bearer Shares to / for registered shares in the Company pursuant to section 38(2) of the said Act.

8. The appointment of the receiver shall take effect upon restoration of the Company.

9. The receiver be given all the powers necessary to effect the redemption, conversion or exchange of the Bearer Shares if she decides to do so.

10. The fees, costs and expenses of the receiver be paid by the Appellant.

11. The receiver's term as receiver of the Company shall cease following her decision whether or not to redeem, convert or exchange the Bearer Shares.

12. The Company shall not be referred to as being in receivership in corporate or formal communications. The Receiver shall be referred to in corporate or formal communication as the "Official Custodian of the Issued Shares" of the Company. The Receiver may communicate to whomsoever concerned that she is appointed by an order of the Court of the Territory of the Virgin Islands.

13. The Appellant pay the costs of the Respondents agreed in the sum of US\$10,000.00.

Reason:

The Court noted that the appellant only pursued its sixth ground of appeal and withdrew its other grounds of appeal. The Court also noted the company's sole de jure director has been dissolved and that the parties have agreed that Mr. Klaus C. Westphal was not a director of the company, but had the authority as an attorney-in-fact to apply for the restoration.

Case Name:

Commissioner of Police

v
Medical Management Company Limited

[BVIMCRAP2020/0001]
(Territory of the Virgin Islands)

Date: Wednesday, 6th October 2021

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Dexter Theodore, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Patrice Hickson

Respondent: Ms. Reynela Rawlins

Issues: Criminal appeal - Practice and procedure - Section 160 of Magistrate's Code – Whether the appellant's failure to enter a recognisance was in breach of section 160 of Magistrate's Code - Whether magistrate erred in ruling that the crown was statute barred from laying the charge against respondent within six months of the expiry of the ten day compliance period given in the notice served on respondent - Whether offence is a continuing offence Whether magistrate erred in failing to take into consideration that offence was continuing offence and therefore not subject to 6 month limitation – Whether magistrate erred in failing to take into account that the offence triable either way therefore it is not subject to 6 month limitation

Result/Order: IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name: Capital WW Investment Limited (In Liquidation) acting
through its Directors
v
Tall Trade Limited

[BVIHCMAP2020/0025]
(Territory of the Virgin Islands)

Date: Thursday, 7th October 2021

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Dexter Theodore, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Tom Smith, QC with him Mr. Lain Tucker

Respondent: Mr. Charles Samek QC, with him Mr. Peter Ferrer, Ms. Marcia McFarlane and Mr. Romane Duncan

Issues: Commercial appeal - Winding up order - Application for the appointment of liquidator - Breach of contract - Breach of shareholders agreement - Clause 46 of shareholders agreement - Failure to pay dividends from Befree in accordance with shareholders agreement - Whether respondent was in breach of shareholders agreement having failed to pay dividends to appellant - Whether representatives of appellant wrongfully prevented payment of dividends to appellant – whether respondent’s representatives conspired to deprive appellant of its dividends and ultimately its shareholding in Befree - Whether intention of representatives in withholding dividends was to prevent appellant from meeting its obligations under the loan agreement and therefore depriving it of the shareholding in Befree - - Admissibility of evidence - Whether the text messages were admissible - Section 125 of the Evidence Act, 2006 - Whether the learned judge erred in the exercise of his discretion under section 125 of the Evidence Act in failing to admit the text messages into evidence - Whether telegram messages disclose agreement on the part of representatives to remove Mr. Megrelishvili and the appellant as shareholders in Befree - Whether messages disclose substantial grounds that there were discussions between alleged conspirators as to the payment of dividends and clear instruction not to pay dividends to the appellant - Whether there was evidence of an unlawful act - Petitioner’s entitlement to a winding up order

- Purpose for which winding up order was sought - Whether the learned judge failed to correctly apply the test laid down in Sparkasse Bregenz Bank AG v Associated Capital Corporation Civil Appeal No. 10 of 2002 – Improper purpose - Whether there was evidence of an improper purpose - Whether the exceptional circumstances test applies to the issue of improper purpose - Whether the learned judge erred in failing to conclude that the application for the appointment of liquidators was being made for an improper purpose, namely, in the furtherance of the alleged conspiracy - Standard of proof for the granting of a winding up order Whether the hearing of application for the appointment of the liquidator was irregular - Section 496(2) of the Insolvency Act, 2003 - Whether the learned judge acted beyond his power in accelerating the hearing of the 2nd application for the appointment of liquidators where there was no evidence that the hearing was urgent - Civil Procedure Rules 2000 26.1(2)(a)

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

Arricano Real Estate Plc

v

Stockman Interhold S.A

[BVIHCMAP2021/0009]

(Territory of the Virgin Islands)

Date:

Friday, 8th October 2021

Coram:

The Hon. Mde. Louise Esther Blenman, Justice of Appeal

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

Appearances:

Appellant: Ms. Blair Leahy, QC and with her Mr. Dave Marshall

Respondent: Mr. Andrew Willins

Issues:

Commercial Appeal - Dismissal of application to appoint liquidator over the respondent company on the basis that it was insolvent - Section 162 (1) of the Insolvency Act 2003 - Whether the learned judge was wrong to conclude that there was a genuine and serious dispute as to whether the 2011 award had been satisfied or there was a breach of the award - Whether there was a genuine and serious dispute as to whether the respondent had an enforceable cross-claim for damages against the appellant - Whether the Court can order damages in lieu of specific performance - Whether there was a genuine and serious dispute as to whether the value of the respondents cross claim exceeded the amount of the application debt - Whether clause 3.4 of the Shareholders Agreement and/or the award had been satisfied - Whether the March 2006 loan was statute barred - Section 4(6) of the limitation ordinance of the BVI - Costs - The rule in Throne Capable - Whether learned judge erred in applying the rule in Throne Capable - Whether totality of circumstances justified a departure from the general rule that the losing party should pay the successful party's costs

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

JTrust Asia Pte. Ltd.

Appellant

v

[1] Mitsuji Konoshita
[2] A.P.F. Group Co., Ltd (In receivership)

Respondents
and

[1] Nicholas James Gronow
[2] David John Ayres
(as Receivers of the Second Defendant)

Receivers

[1] Showa Holdings Co., Ltd
Intervenor

[BVIHCMAP2021/0013]
(Territory of the Virgin Islands)

Date: **Friday, 8th October 2021**

Coram for **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
delivery: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Vernon Flynn, QC with him Mr. Peter Ferrer and Ms. Marcia McFarlane and Ms. Jneil Stewart**

Respondents: **Mr. Robert Nader**
Mr. Adrian Francis and Ms. Andrea Walters for the interveners
Showa Holdings Co. Ltd
Ms. Yegane Guley in attendance as an observer on behalf of
the receivers

Issues: **Commercial appeal – Interlocutory appeal – Receivership order - Cross undertaking in damages - Whether receivership order is a form of injunction- Whether the learned judge erred in holding that a receivership order is a form of injunction - Whether the requirements for a cross undertaking in damages from the applicant ordinarily found in freezing orders ought to**

apply to a receivership order - Whether the learned judge erred in holding that a receivership order was ancillary to a freezing order and that therefore the cross undertaking ought to be implied into the receivership order - Whether the learned judge erred in extending the cross undertaking provided by the appellant previously in respect of the freezing order to the receivership order

Result/Order:

IT IS HEREBY ORDERED THAT:

Judgment is reserved.