

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

VIDEOCONFERENCE
TERRITORY OF THE VIRGIN ISLANDS
Friday, 18th February, 2022

APPLICATION AND APPEAL

Case Name: Credorax Inc.

v

1. Israeli VC Partners, LP
2. Izit Management Limited (In its capacity as General Partner of Israeli VC Partners, LP)

[BVIHCMAP2022/0011]
(Territory of the Virgin Islands)

Date: Friday, 18th February 2022

Coram: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Gerard St. C. Farara, Justice of Appeal [Ag.]

Appearances:

Applicant/Appellant:	Mr. Richard Millett QC with him Mr. Richard Evans and Ms. Tameka Davis
Respondents:	Mr. Alain Choo-Choy QC with him Mr. Timothy Wright

Issues: Application for leave to appeal - Interlocutory Appeal- Liberty to apply for determination of new issues for trial- Whether judge erred in the exercise of his case management discretion by refusing to adjourn the trial dates - Test for appellate court's interference with

discretionary case management decisions - Whether judge's decision was so plainly wrong to be outside the generous ambit of which reasonable decision makers may disagree

Type of Order

Oral Decision

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The application for leave to appeal is dismissed.
2. The appeal is consequently dismissed.
3. Costs to the respondent on the appeal in the sum of no more than $\frac{2}{3}$ of the costs in the court below to be assessed by a judge of the commercial court.

Reason:

The Court heard an urgent application made by the applicant/appellant seeking leave to appeal the order of the Honourable Justice Wallbank [Ag.] made on the 16th February 2022, in which the learned judge dismissed an application by the applicant/appellant for an adjournment of the trial dates listed for Monday 21st February 2022 until Wednesday 23rd February 2022. The applicant/appellant also sought in their application that the application for leave to appeal be treated as the appeal.

The Court upon reading the written submissions of both learned Queen's Counsel for the applicant/appellant and the respondents, hearing their oral submissions before the Court, and upon giving deliberate consideration to all the matters, was of the unanimous view that the applicant/appellant failed to meet the threshold for the grant of leave to appeal.

In coming to its decision, the Court was guided by the principles enunciated in the cases of Attorney General of Grenada et al v Andy Redhead GDAHCVAP2007/0010 (delivered 17th June 2007,

unreported), and Enzo Addari v Edy Gay Addari Civil Appeal No. 21 of 2005 (delivered 23rd September 2005, unreported). The Court was also mindful that this matter engaged the case management discretion of the trial judge who had been involved in the matter in its entirety. On that basis, there was a very high threshold to be met for the appellate court to interfere with the exercise of discretion of the trial judge, as stated in the well known cases of Michel Dufour et al v Helen Air Corp. Limited [1996] E.C.L.R. 95, Siong Beng Seng & Others v Caldicott Worldwide Ltd BVIHCP2020/0020 (delivered 1st June 2021, unreported) and Ming Siu Hung and others v J.F. Ming Inc. and another [2021] UKPC 1.

The Court in applying those principles was of the view that, there was no basis on which this Court could conclude that the decision of the learned judge in refusing to adjourn the matter was outside the generous ambit in which reasonable disagreement is possible. Accordingly, the application for leave to appeal was dismissed and consequently the appeal also followed the dismissal order.

In relation to costs, the respondents having made an oral application for costs to the Court, were awarded costs on the appeal in the sum of no more than $\frac{2}{3}$ of the costs in the court below to be assessed by a judge of the Commercial Court.