

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

TERRITORY OF THE VIRGIN ISLANDS
29th October – 2nd November 2018

JUDGMENTS

Case Name: Prickly Bay Waterside Limited
v
British American Insurance Company Limited
(Under Judicial Management)
[GDAHCVAP2015/0026]
(Grenada)

Date: Wednesday, 31st October 2021

Coram for delivery of judgment: The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, Justice of Appeal [Ag.]

Appearances:

Appellant: Tamera Cameron holding for Stephen Auld QC and Ian Sandy

Respondent: Sydney Bennett QC holding for Mr. James Bristol

Issues: Civil appeal – Principles governing establishment of a Quistclose trust – Whether the learned judge erred by not finding that a Quistclose or other similar trust existed

Result and Reason: Held: dismissing the appeal; awarding costs to the respondent at the rate of two-thirds of the costs awarded in the lower court, that:

An objective assessment of the evidence in this case does not disclose an intention to create a trust. The parties were involved in a commercial transaction where Mr. Steele wanted a secure method of paying the balance of the purchase price for his property and British American was prepared to provide that service in the form of an irrevocable guarantee supported by an annuity policy. There was no objective evidence that the parties did not intend that British American would be

able to intermingle the fund with its general assets and be free to dispose of the fund in the normal course of its business. As such, Prickly Bay had failed to establish that the fund was impressed with a Quistclose or similar trust and the learned judge did not err in so finding.

Barclays Bank Ltd v Quistclose Investments Ltd [1970] AC 567 applied; Twinsectra Ltd v Yardley and others [2002] 2 AC 164 applied; Bieber v Teathers Ltd (in liquidation) [2012] EWHC 190 (Ch) applied; Bellis and others v Challinor and others [2015] EWCA Civ 59 applied; Henry v Hammond [1913] 2 KB 515 applied; Cooper v PRG Powerhouse Ltd (in creditors' voluntary liquidation) and others [2008] EWHC 498 (Ch) distinguished.

Case Name:

[1] Sky Stream Corporation

[2] Sergey Linkov

[2] Irina Kazantseva

v

Alexander Pleshakov

[BVIHCMAP2014/0027]

(Territory of the Virgin Islands)

Date:

Thursday, 1st November 2018

**Coram for
delivery of
judgment:**

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

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mde. E. Ann Henry QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. David Welford

Respondent: Mr. Oliver Clifton

Issues:

Commercial appeal – Whether Court should interfere with findings of fact of the trial judge – Whether trial judge erred in finding that there was a nominee agreement – Whether trial judge is entitled to change his mind during the hearing

**Result and
Reason:**

Held: allowing the appeal and setting aside the orders of the learned judge and awarding costs to the appellant both in the court below and on the appeal to be assessed, if not agreed within 21 days, that:

- 1. An appellate court should not interfere with the factual findings of a trial judge on primary facts, the evaluation of facts and inferences to be drawn from facts, unless the trial judge was plainly wrong. The principles regarding appellate caution assume that the trial judge has taken proper advantage of having seen and heard the witnesses and has tested the evidence by reference to a correct understanding of the issues against the background of the material available and the inherent probabilities. The appellate court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his own conclusions. In this case, the judge's evaluation was wrong and the appellate court is free to carry out its own evaluation and arrive at its own conclusion. Having regard to the inherent probabilities of the case and the objective facts, the oral agreement has not been established.**

Central Bank of Ecuador v Centicorp SA [2015] UKPC 11; Beacon Insurance Co Ltd v Maharaj Bookstore Ltd [2014] UKPC 21; Watt (Or Thomas) v Thomas [1947]1 All ER 582 applied.

- 2. The court had no material to find a nominee agreement and was plainly wrong in concluding that the appellants acquired the Sky Stream shares as nominees for Mr. Pleshakov. This was a case where an oral agreement had to be proved and Mr. Pleshakov had failed to do so. The pleaded case was not about the Transaero shares; the case was based on an oral agreement relating to the Sky Stream shares and this case failed. The rejection by the trial judge of Mr. Pleshakov's case as regards the time, place and existence of the oral agreement, the sending of the appellants, at his expense, to the British Virgin Islands and the ownership of the shares in Transaero showed that Mr. Pleshakov's case was so unsatisfactory and unreliable on these fundamental aspects, that his claim, as regards the existence of the oral agreement, was bound to fail. These points, coupled with the payment by the**

appellants of the sums for the incorporation of Sky Stream and for the acquisition by Sky Stream of the Transaero shares, were completely at odds with Mr. Pleshakov's case and his ability to prove his case. Any matters about subsequent conduct do not form the basis of an agreement where there is none established by the evidence of what happened at the time of the acquisition of the shares.

3. It has long been settled law that a judge is entitled to reverse his decision and has undoubted jurisdiction to change his mind, resile from comments made during the hearing of a matter and revisit his own decision at any time before his order is drawn up and perfected. His overriding objective must be to deal with the case justly. A relevant factor has been whether any party has acted upon the decision to his detriment, especially in a case where it is expected that they may do so before the order is formally drawn up.

Re L and B (children) (care proceedings: power to revise judgment) [2013] UKSC 8 applied

APPLICATIONS AND APPEALS

Case Name:

[1] Mark Byers
[2] Mark McDonald
(as Joint Liquidators of the above-named company)
[3] Pioneer Freight Futures
Company Limited (In Liquidation)
v
Cheng Ningning
(Also Known as Diana Chen)

[BVIHCVAP2015/0011]

Date:

Monday, 29th October 2018

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:

Applicants: Mr. Scott Cruickshank

Respondent: Mr. Stuart Cullen

Issues:

Application for conditional leave to appeal to Her Majesty in Council – Whether intended appeal lies as of right and is of prescribed value – Application for a stay pending intended appeal to Her Majesty in Council

**Type of
Order:**

Oral decision

Result:

IT IS HEREBY ORDERED THAT:

1. Leave to appeal to her Majesty in Council is hereby granted upon condition that:
 - (i) That the appellant within 90 days from the date of this order enter into good and sufficient security in the sum of £500.00 Pounds Sterling or its United States dollar equivalent for due prosecution of the appeal such security to consist of the deposit of said amount at the court office.
 - (ii) The appellant within 90 days from the date thereof shall take necessary steps for the purpose of procuring the preparation of the records, the settling of such records with the solicitors for the respondents of this application and the certification of the record by the Registrar of the Court Appeal.
 - (iii) The Record of Appeal shall be prepared in accordance with Rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and practice directions 4.2.1 to 4.3.2 and practice direction 5 the same to be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay where final permission to appeal has been granted.
2. The appellant shall apply for final leave to appeal to her Majesty in Council supported by the certificate of the Registrar that the security for costs and prosecution of the appeal referred to at paragraph 1.a above has been

given within the time prescribed for the satisfaction of the Registrar.

3. There shall be a stay of execution of the order of the Court pending the disposal of the appellant's appeal to her Majesty in Council.
4. The costs of the application for conditional leave be costs in the appeal to her Majesty in Council.

Reason: The Court was satisfied that leave to appeal to Her Majesty in Council was as of right. The Court was satisfied that the appeal satisfied the monetary threshold set out in the Virgin Islands Constitution Order in relation to appeals as of right.

Case Name: Kim Russell Romney
v
John Chinnery
[BVIHCVAP2017/0001]

Date: Monday, 29th October 2018

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Ruthilia Maximea
Respondent: Mr. Patrick Thompson Jr.

Issues: Application to vary order of single judge – Application for leave to withdraw application

Type of Order: Oral decision

Result: IT IS HEREBY ORDERED THAT:
1. With the leave of the court the appellant withdraws its application for the variation of the order of Blenman J dated 5th December 2017. The application is hereby withdrawn.
2. The appellant is to file and serve submissions by 19th

November 2018.

3. The respondent shall file and serve submissions in response no later than Friday 21st December 2018.
4. The appellant shall if necessary shall file and serve a reply no later than 7th January 2019.
5. The appeal shall thereafter be fixed for hearing at the next sitting of the Court of Appeal during the week commencing 25th March 2019.

Reason:

This was an application to vary an order made by Blenman JA on 5th December 2017. The applicant sought leave of the Court to withdraw the application on the basis that it had been overtaken by a subsequent order of the Court made on 5th October 2018, and that the fact that there had been compliance with the order of Blenman JA. The Court was satisfied that the application to withdraw should be granted and that directions were necessary for the progress of the appeal.

Case Name:

[1] JSC MCC Eurochem
[2] Eurochem Trading GMBH
Claimants/Respondents

and

[1] Livingston Properties Equities Inc.
[2] Nimati International Trading Limited
[3] Nautilus Services Limited
[4] Global Med Services Inc.
[5] Sevan Properties management
Limited
[6] Rumbay Assets Corp.
[7] Banter Industries Limited
[8] Valery Rogalskiy
[9] Dimitry Pomytkin
[10] Nedjet Baysan
[11] Kopist Holding Limited
Claimants/Respondents

[1] Itrade Fertilisers S.A.
[2] Fabio Scalabrini

**[3] Darlow Enterprises
[4] Darlow Investment LP
[5] Dearborn Enterprises
[6] Gianthill Management Limited
[7] Drey Moor Fertilisers Overseas PTE
Limited**

Appellant/Defendants

[BVIHCMAP2016/0042-0046]

Date: Monday, 29th October 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Jonathan Addo

Respondents: Mr. Stephen Moverley Smith, QC for the 2nd – 5th respondents,
10th -13th respondents and 16th-18th respondents

Mr. Scott Cruickshank for the 10th – 13th respondents

Mr. Brian Child and Ms. Charlotte Walker for the 18th respondent.

Issues: Application for conditional leave to appeal to Her Majesty in Council – Adjournment

Type of Order: Adjournment

Result: IT IS HEREBY ORDERED THAT:

1. The hearing of application for a stay and for conditional leave to appeal to Her Majesty in Council is fixed for a one day hearing on Tuesday 13th November 2018 during the next sitting of the Court of Appeal in St Lucia.
2. The stay is continued until that hearing.

Reason: The Court could not entertain the hearing of the application for leave to appeal given the time estimate and the number of matters already listed.

Case Name:

**Charmaine Rosan-Bunbury
v
[1] The Attorney General
[2] The Commissioner of Police

[BVIHCVAP2015/0017]**

Date:

Monday, 29th October 2018

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, SC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. David Penn

Respondents: Ms. Maya Barry

Issues:

Civil appeal – Application for adjournment

Result:

IT IS HEREBY ORDERED THAT:

- 1. The matter is adjourned.**
- 2. The matter is removed from the list and is to be restored on the application of the appellant.**

Reason:

Counsel for the appellant requested an adjournment on the basis the Court's file needs to be reconstructed as it was one of the files affected by the passage of hurricane Irma. The Court was also informed by Mr. David Penn that a notice of acting had not yet been filed on behalf of the appellant. This was caused by fact that the appellant had died, and the administration of her estate was not yet complete.

Case Name:

**Chu Kong
v
[1] David Yen Ching Wai, Joint
Liquidator of Ocean Sino (In
Liquidation)**

**[2] Roy Bailey, Joint Liquidator of
Ocean Sino (In Liquidation)
[3] John Greenwood, Joint Liquidator
of Ocean Sino (In Liquidation)
[4] Chan Pui Sze, Joint Liquidator of
Ocean Sino (In Liquidation)
[5] Lau Wing Yan**

[BVIHCMAP2018/0019]

Date: Monday 29th October 2018

**Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith, SC, Justice of Appeal [Ag.]**

Appearances:
Appellant: Mr. John Carrington, QC with him Ms. Pauline Mullings
**Respondents: Ms. Rosalind Nicholson for the 5th Respondent
No appearance on behalf of the 1st to 4th Respondents**

Issues: Commercial appeal –Insolvency proceedings –Application by stakeholder for directions to be given to liquidators regarding future conduct –Inherent jurisdiction of the court—Whether the court can direct liquidators to implement proposed splitting arrangement under its inherent jurisdiction – Whether judge erred in refusing to give directions – Substantive relief sought by appellant not sought in the court below

Type of Order: N/A

Result/Order: [Oral delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name: Alanah Chalwell

v
Commissioner of Police

[BVIHCVAP2018/0005]

Date: Monday, 29th October 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Israel R. Bruce

Respondent: Ms. Kim Hollis QC, Director of Public Prosecution

Issues: Criminal appeal – Whether the Court of Appeal has jurisdiction to hear the matter pursuant to section 30 (2) Eastern Caribbean Supreme Court (Virgin Islands) Act

Type of Order: Directions

Result: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The appellant shall file and serve submissions on the Respondent on the question posed by the court by Friday 23 November 2018.
2. The respondent is to file submissions in response by Friday 14 December 2018.
3. Reply submissions are to be filed by the 21st December 2018.
4. The matter will be listed for hearing at the next sitting of the Court of Appeal during the week commencing 25th March 2019.

Reason: The matter was originally listed for a status hearing before a single judge on Tuesday, 30th October 2018. The Court of its own motion considered the issues on the appeal and directed counsel to provide written submissions on the jurisdiction of the Court to hear the matter under section 30(2) Eastern Caribbean Supreme Court (Virgin Islands) Act.

Case Name: Kevin Gerald Stanford
v
[1] Stephen John Akers
[2] Mark McDonald
(as Joint Liquidators of Chesterfield
United Inc.)
[BVIHCMAP2017/0019]

Date: Monday, 29th October 2018

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mde. E. Ann Henry QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. John McDonnell, QC

Respondents: Mr. David Allison, QC with him, Mr. Tim Wright

Issues: Application for conditional leave to appeal to Her Majesty in
Council

**Type of
Order:** N/A

Result: [Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: [1] Sheikh Mohamed Ali Alhamrani
[2] Sheikh Siraj Ali Alhamrani
[3] Sheikh Khalid Ali Alhamrani
[4] Sheikh Mohamed Ali Alhamrani (As
representative of the late Sheikh
Abdulaziz Ali Alhamrani)
v
Sheikh Abdulah Ali Alhamrani
[BVIHCMAP2018/0012]

Date: Monday, 29th October 2018

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mrs. Kimberly Crabbe-Adams

Respondent: Mr. Matthew Mason

Issues: Interlocutory Appeal- Appeal against costs

Type of Order: Oral decision

Result: IT IS HEREBY ORDERED BY CONSENT THAT:

1. Sheikh Abdulaziz Abdullah shall (without prejudice to the above mentioned order made on 23 October 2018) be appointed to represent the estate of Sheikh Abdullah Ali M Alhamrani for all the purposes of this Appeal (Namely Appeal BVIHCMAP2018/30) and with full power to conduct the response to that Appeal on behalf of and so as to bind the estate of the late Sheikh Abdullah Ali M Alhamrani including power to settle or compromise that Appeal on behalf of and so as to bind that Estate.
2. The sum of USD 76,294.12 (inclusive of interest) shall be substituted for the sum of USD 92,588.24 (exclusive of interest) assessed by the 2018 Costs Assessment Judgment in respect of the Appealed Points.
3. The said sum of USD 76,294.12 shall be payable by the Appellants/Defendants to Sheikh Abdulaziz Abdullah as representative of the estate of Sheikh Abdullah within 14 days of the date of this Order.
4. Interest in accordance with the Judgments Act (Cap 30) at the rate of 5% per annum shall be payable on the said sum of USD 76,294.12 (if and to the extent that the same is not paid within 14 days from the date of this Order) by the Appellants/Defendants to Sheikh Abdulaziz Abdullah as representative of the estate of Sheikh Abdullah as from the expiry of that 14 days period until payment.

5. There shall be no order as to costs in respect of this appeal.
6. This Order shall not prejudice or affect the 2018 Costs Assessment Judgment or the 2018 Costs Assessment Order so far as that Order relates to the Unappealed Points and the sum of USD 53,492.49(exclusive of interest) payable under that Order in respect of the Unappealed Points)

Reason:

This was an appeal against a 2018 Costs Assessment Judgment and 2018 Costs Assessment Order. The Appealed Points from the assessment of costs amounted to USD 92,588.24 (exclusive of interest) with the Unappealed Points assessed at USD 53,492.49 (exclusive of interest). By order dated 23 October 2018, this Court appointed Sheikh Abdulaziz Abdullah to represent the estate of Sheikh Abdullah Ali M Alhamrani (Sheikh Abdullah), the original respondent/claimant who was now deceased, in all proceedings in which the deceased had an interest, in particular the proceedings with number BVIHCMAP2016/0030. The parties agreed and reached the terms of settlement that the sum of USD 76,294.12 (inclusive of interest) should be substituted for the sum of USD 92,588.24 (exclusive of interest) assessed by the 2018 Costs Assessment Judgment in respect of the Appealed Points.

Case Name:

**Donna Union Foundation
v**

**[1] Svoboda Corporation
[2] Koshigi Limited
[BVIHCMAP2018/0043]**

Date:

Tuesday, 30th October 2018

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Stephen Midwinter and with him Mr. Robert Nader
Respondents: Mr. Andrew Willins

Issues: Application to set aside order of single judge

Type of Order: N/A

Result: IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name: [1] Koshigi Limited
[2] Svoboda Corporation
v
Donna Union Foundation
[BVIHCMAP2018/0043]

Date: Tuesday, 30th October 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:
Appellants: Mr. Stephen Midwinter, QC and with him Mr. Robert Nader
Respondent: Mr. Andrew Willins

Issues: Commercial appeal – Appeal overtaken by subsequent appeal

Type of Order: Oral decision

Result and Reason: [Oral delivery]

IT IS HEREBY ORDERED THAT:

UPON the Court noting that the substantive matters of Appeal No. 43 of 2018 are moot, having been overtaken by subsequent proceedings, costs of Appeal No. 43 are costs in Appeal No. 50 of 2018.

Case Name: [1] Koshigi Limited

**[2] Svoboda Corporation
v**

**Donna Union Foundation
[BVIHCMAP2018/0050]**

Date: Tuesday, 30th October 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:
Appellants: Mr. Stephen Midwinter QC, with him, Mr. Robert Nader
Respondent: Mr. Andrew Willins

Issues: Civil appeal – Jurisdiction of the BVI Commercial Court to grant interim relief in support of foreign arbitration proceedings –Section 43 of the Arbitration Act, 2003 –Section 184(5) of the BVI Business Companies Act, 2004 – Black Swan principle – Whether the learned judge erred in exercising discretion to grant a worldwide freezing order, disclosure order and receivership order

Type of Order: N/A

Result: [Oral delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name: **[1] Mitsuji Konoshita
[2] A.P.F Group Co., Ltd
v
Jtrust Asia PTE Ltd.
[BVIHCMAP2018/0047]**

Date: Tuesday, 30th October 2018

Coram: The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mde. Ann Henry, QC, Justice of Appeal (Ag.)

Appearances:

Appellants: Mr. Benjamin Strong QC

Respondent: Mr. Vernon Flynn QC

Issues:

Commercial appeal – Freezing order – Application to discharge freezing order –Whether respondent had a good arguable case – Consequence of material non-disclosure – Whether there was a real risk of dissipation of appellants’ assets –Delay – Appointment of receiver – Weight to be given to foreign judgment in related matter

Type of Order:

N/A

Result:

[Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

[1] Mitsuji Konoshita
[2] A.P.F Group Co., Ltd
v
Jtrust Asia PTE Ltd.
[BVIHCMAP2018/0047]

Date:

Tuesday, 30th October 2018

Coram:

The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mde. Ann Henry, QC, Justice of Appeal (Ag.)

Appearances:

Appellants: Mr. Benjamin Strong QC

Respondent: Mr. Vernon Flynn QC

Issues:

Commercial appeal – Freezing order – Application to discharge freezing order –Whether respondent had a good arguable case – Consequence of material non-disclosure – Whether there was a real risk of dissipation of appellants’ assets –Delay – Appointment of receiver – Weight to be given

to foreign judgment in related matter

Type of
Order:

N/A

Result:

[Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

**Emmerson International Corporation
v
Starlex Company Limited and Others
[BVIHCMAP2018/0044]**

Date:

Wednesday, 31st October 2018

Coram:

The Hon. Madame Esther Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Philip Marshall QC, with him, Mr. Robert Weekes and Ms. Colleen Farrington

Respondents: Mr. Simon Birt QC, with him, Ms. Arabella di Iorio

Issues:

Interlocutory Appeal under CPR 62.10 - Appeal against relief from sanction under CPR 18.12 in respect of late filing of defence to a third ancillary claim – Whether the Court erred in exercising its discretion to grant relief from the effect of CPR 18.12(2)(a) – Whether the Court erred in law in finding that the defendants to the ancillary claim had satisfied the three preconditions for the granting of relief under CPR 26.8 (2)

Type of
Order:

N/A

Result/Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

[1] Gany Holdings (PTC) SA

[2] Asif Rangoonwala

v

[1] Zorin Sachak Khan

[2] Afaque Ahmed Khan

[3] Sasheen Annwar

[BVIHCMAP2018/0045]

[BVIHCMAP2018/0048]

Date:

Wednesday, 31st October 2018

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Adrian Francis and with him, Mr. Simon Hall

Respondents: Mr. Adman Solomon QC, with him, Mr. Nicolas Brookes

Issues:

Commercial appeal — Costs — Recovery of costs for work done by persons not enrolled as legal practitioners in the Virgin Islands — Statutory interpretation — Section 18(3) of Legal Profession Act of the Virgin Islands — Presumption against retrospective application of statutes — Whether Legal Profession Act prohibits recovery of costs of overseas lawyers acting as legal practitioners in the Virgin Islands where costs incurred prior to commencement of Act — Whether costs incurred after commencement of Legal Profession Act by UK costs draftsman not entitled to practise law in the Virgin Islands recoverable

**Type of
Order:**

N/A

Result:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Case Name:

**[1] Outlook Asset Management LP
[2] Stanhope Overseas Limited
[3] Concord International Investments Group LP
v
[1] Capstone Corporate Limited
[2] Capstone Advisory Services SAE
[3] Mr Sherif Raafat
[BVIHCMAP2018/0016]**

Date: Wednesday, 31st October 2018

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

Appearances:

Appellants: Mr. Adman Solomon QC, with him, Mr. Nicolas Brookes

Respondents: Mr. Peter Ferrer, with him, Ms. Sarah Thompson for the 1st Respondent

Issues: Interlocutory appeal – Striking out – Whether trial judge erred in striking out the appellant's claim pursuant to rule 20.1 of the Civil Procedure Rules 2000 – Draft judgment – Amendment – Power of judge to amend judgment – Amending the statement of claim – Passing off – Inverse passing off – Goodwill

Type of Order: N/A

Result: [Oral delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**

Case Name:

**The Attorney General of the Virgin Islands
v
Wilfred Smith
[BVIHCVAP2018/0003]**

Date: Thursday, 1st November 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Giselle Jackman Lumy, Senior Crown Counsel and Ms. Maya Barry, Crown Counsel on behalf of the Attorney General

Respondent: Mr. John McCarroll SC, with him, Mr. Jonathan Addo and Ms. Keisha Frett

Issues: Civil appeal – Application to strike out claim – Abuse of process – Whether proceeding by way of an ordinary claim for relief in public law amounts to an abuse of process – Whether the master erred in refusing to strike out claim – Statutory process available under Physical Planning Act not pursued – Application for default judgment made after strike out application – Whether respondent entitled to default judgment

Type of Order: N/A

Result: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The Appellant, if necessary, shall file and serve reply submissions in respect of the authorities submitted by the Respondent, namely, *Davy v Spelthorne Borough Council* [1983] 1 A.C. 263 HL and the authority of *Roy and Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 A.C. 624 HL which appears at Tabs 8 and 11 of the Respondent's authorities bundle no later than 9th November 2018.
2. The decision of the court is reserved.

Reason: Counsel for the appellant raised the concern that eight additional authorities were filed by the respondent the eve of the hearing, two of which the respondent sought to rely on in oral submissions. The Court granted the appellant permission to respond in writing in respect to the two authorities relied on by the respondent in oral submissions.

Case Name:

Harvest Network Limited
v
CHC Investment Holdings Limited
[BVIHCMAP2018/0007]

Date: Thursday, 1st November 2018

Coram: The Hon. Dame Janice Pereira, DBE Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Godfrey Smith SC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Peter Ferrer

Respondents: Mr. Brian Lacy

Issues: Commercial appeal – Whether leave to appeal was required to appeal against the order of Wallbank J dated 29th November 2017 – Whether an order granting leave to pursue derivative proceedings was interlocutory of final – Application for leave to adduce fresh evidence

Type of Order: Oral Judgment with Written Reasons to Follow

Result: [Oral Delivery]

IT IS HEREBY ORDERED THAT:

1. The Court is of the view that the order was an interlocutory order from which the grant of leave was required. Accordingly, the substantive appeal is a nullity.
2. Time for leave to appeal to her Majesty in Council will run from the date of delivery of the written reasons.

Reason: The Court having taken the view that the appeal was a nullity, the application for leave to adduce fresh evidence automatically fell away. The Court indicated that written reasons for its decision would follow.

Case Name: **Ciban Management Corporation**
v
[1] CITCO (BVI) Limited
[2] Tortola Corporation Company Limited
[BVIHCVAP2013/0001]

Date: **Thursday, 1st November 2018**

Coram: **The Hon. Mde. Louise Esther Blenman, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mde. E. Ann Henry QC, Justice of Appeal [Ag.]

Appearances:
Appellant: **Mr. Ben Hubble QC**
Respondent: **Mr. Steven Thompson QC**

Issues: **Civil appeal — Breach of duty of care — Whether learned judge erred in finding that there was no duty of care owed as director —Whether learned judge erred in finding that there was no breach of tortious duties — Applicability of principle of ostensible authority —Breach of statutory duty**

Type of Order: **N/A**

Result: **[Oral delivery]**

IT IS HEREBY ORDERED THAT:
Judgment reserved.

Case Name: **Kevin Gerald Stanford**
v
1. Stephen John Akers
2. Mark McDonald
(as Joint Liquidators of Chesterfield United Inc.)

[BVIHCMAP2017/0019]

Date: Thursday 1st November 2018

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Rolston Nelson, Justice of Appeal [Ag.]
The Hon. Mde Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. John McDonnell QC

Respondents: Mr. David Allison QC, with him, Mr. Tim Wright

Issues: Application for conditional leave to appeal to Her Majesty in Council – Whether appeal lies as of right – Whether intended appeal raises question of great general or public importance

Type of Order: Oral Decision

Result: IT IS HEREBY ORDERED THAT:

1. Mr. Stanford is not entitled as of right to Leave to appeal to the Privy Council pursuant to section 3(1)(a) of the 1967 Order.
2. Mr. Stanford's application for this Court to exercise its discretion pursuant to section 3(2)(a) of the 1967 Order to grant Leave to Appeal is refused.
3. The Application for Leave is accordingly refused.
4. Mr. Stanford shall pay the costs of this application to the Joint Liquidators, such costs to be assessed, if not agreed within 21 days of this order.

Reason: The Court was satisfied that an appeal did not lie as of right from the Court of Appeal's decision and that the appeal did not raise a question of great general or public importance. There was therefore no basis upon which leave to appeal to Her Majesty in Council could have been granted.

Case Name:

1. Jevonne Demming
2. Sherman Williams
v
The Queen

Date: Friday, 2nd November 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Patrick Thompson Jr. for Mr. Jevonne Demming
Mr. Michael Maduro for Mr. Sherman Williams

Respondent: Mr. Leslie Ann Faulkner and Ms. Melissa Brewley

Issues: Criminal appeal – Application for adjournment

Type of Order: Adjournment

Result: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Counsel for appellant, Sherman Williams shall file and serve skeleton arguments together with copies of the authorities referred to no later than Friday 29th December 2018.
2. The Crown, the Respondent, shall be at liberty to file and serve reply submissions no later than Friday 26th January 2019.
3. The hearing of this appeal is adjourned to the next sitting of the Court scheduled for the week commencing 25th March 2019.
4. This shall be the final adjournment of the appeal.

Reasons: Counsel for Sherman Williams sought an adjournment, submitting to the Court that he was not ready to proceed with the appeal on due to difficulties obtaining instructions from his client. The Court granted a final adjournment of the matter.

Counsel for Jevonne Demming indicated that he was ready to proceed with the appeal and submitted to the Court that the appeals could be severed as there was no common ground of

appeal between the appellants. The Court was of the view that the appeals should not be severed.

The Court noted that the notice of appeal filed on 18th December 2015 on behalf of Sherman Williams was filed out of time without the leave of the Court and an application for extension of time had not been filed. The Court declined to hear oral applications to extend and amend the notice of appeal and indicated that a written application was to be filed in order for the matter to be regularized.

Case Name: **Shaun Williams**
v
Th Commissioner of Police
[BVIHCRA2014/0020]

Date: **Friday, 2nd November 2018**

Coram: **The Hon. Dame Janice Pereira, DBE, Chief Justice**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: **Mr. Patrick Thompson Jr.**
Respondent: **Ms. Tiffany Scatliffe Esprit, Principal Crown Counsel**

Issues: **Criminal appeal – Possession of firearm – Whether conviction wholly unsupported by evidence – Whether magistrate had before him sufficient evidence to convict the appellant**

Type of Order: **Oral Judgment**

Result: **IT IS HEREBY ORDERED THAT:**
1. The appeal against conviction is dismissed.
2. The appellant’s sentence is varied to a sentence of two years imprisonment with one year suspended, in addition to a fine of USD \$2,000.00.

Reason: **The Court’s unanimous decision was that the appeal against conviction should be dismissed on the basis that the**

magistrate had before him ample evidence on which he could convict the appellant. This evidence included a partial DNA profile, evidence as to where the firearm was found. The learned magistrate found that evidence to be true and it was open to him to do so. The Court accordingly took the view that the magistrate reasonably arrived at the position that he did and accordingly the appeal against conviction has no merit and is dismissed.

The Court also considered that the appellant was fined USD \$2,000.00 following his conviction. A custodial sentence was not imposed. In the circumstances, that sentence would have been unduly lenient in relation to a firearm offence and accordingly accepted the position of the Director of Public Prosecutions that the sentence should be varied.

Case Name:

**Daphne Frett
v
[1] Reeso Maduro
[2] Registrar of Lands
[BVIHCVAP2018/0004]**

Date:

Friday, 2nd November 2018

Coram:

**The Hon. Mde Louise Esther Blenman, Justice of Appeal
The Hon. Mde Gertel Thom, Justice of Appeal (Ag.)
The Hon. Mde Ann Henry, QC, Justice of Appeal (Ag.)**

Appearances:

Appellant: Ms. Lavonna Burrows

**Respondents: Mr. Leroy Jones for the 1st Respondent
Ms Maya Barry for the 2nd Respondent**

Issues:

Interlocutory appeal — Application to strike out amended claim — Preliminary issue — Whether notice of appeal filed out of time — Locus standi — Whether appellant has standing to bring claim on behalf of estate of decedent where no grant of letters of administration made in her favour — Rule in Ingall v Moran — Special circumstances exception—Whether special circumstances exist which enable appellant to bring proceedings without grant of letters of administration

**Type of
Order:**

N/A

Result:

[Oral delivery]

**IT IS HEREBY ORDERED THAT:
Judgment is reserved.**