

COURT OF APPEAL SITTING
TERRITORY OF THE VIRGIN ISLANDS
20th – 24th November 2017

		<u>JUDGMENTS</u>
Case Name:		ABN AMRO Fund Services (Isle of Man) Nominees Limited (formerly Fortis (Isle of Man) Nominees Limited) and others v Kenneth Krys and Charlotte Caulfield (as Joint Liquidators of Fairfield Sentry Limited) and Fairfield Sentry Limited (In Liquidation) et al [BVIHCMAP2016/0011 – 0028]
Date:		Monday, 20th November 2017
Coram:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:		
	Appellants	Lord Falconer, QC, Mr. Stephen Rubin, QC and Mr. Piers Plumptre of Gibson Dunn and Ms. Nadine White of O’Neal Webster for the appellants in BVIHCMAP: 14-16, 26-28 of 2016
		Mr. Mark Hapgood, QC, Mr. Alan Roxburgh, Mr. Philip Kite and Ms. Claire Goldstein of Harneys Westwood & Riegels for the appellants in BVIHCMAP: 11-13, 23-25 of 2016
	Respondents	Mr. Gabriel Moss, QC, Mr. Stephen Midwinter and Mr. William Hare of Forbes Hare for the Respondents
Issues:		Commercial appeal – Insolvency – Virgin Islands

		Insolvency Act, 2003 – Section 273 – Locus standi to apply for relief under section 273 – Whether the appellants as former shareholders are “persons aggrieved” by the liquidator’s act, omission or decision – Courts jurisdiction to grant anti suit injunction – Issue estoppel – Abuse of process – Whether the Liquidators should be restrained from pursuing the US Proceedings pursuant to the jurisdiction and power of the court given under section 24 of the West Indies States Supreme Court (Virgin Islands) Ordinance – Whether the US Bankruptcy Court may grant relief pursuant to section 249 of the Insolvency Act.
Result and Reason:		The appellants are former shareholders of Fairfield Sentry Limited (in liquidation) (“Sentry”) which operated as a feeder fund to Bernard L. Madoff’s company, BLM Investment Securities (“BLMIS”). The Liquidators are court appointed liquidators following the insolvency of Sentry and the other corporate respondents (“the Funds”). The joint liquidators of the Funds brought claims against the appellants to recover redemption monies paid out to them based on alleged mistaken calculations of the net asset value (the “NAV”) of the shares occasioned, it is said, by Madoff’s fraud (the “BVI Proceedings”). In the BVI Proceedings, the court considered four preliminary issues: issues 1-3 concerned the question whether certain documents recording the NAV per share or the redemption price were binding on the Fund under the Fund’s Articles and issue 4 concerned whether the defendants, by surrendering their shares gave good consideration for the money that they received on redemption. The questions raised on the preliminary issues were finally determined by the Privy Council decision in Fairfield Sentry Ltd (in liquidation) v Migani and others (“Migani”). With this Court’s sanction, the Liquidators are currently pursuing US Proceedings. The US Proceedings have been ongoing and the appellants are said to be a small number of the hundreds of US defendants. In the US Proceedings, the Liquidators

		seek the recovery of redemption monies on behalf of the Funds, albeit in respect of a different set of redemptions which were not the subject of the BVI Proceedings but are said to be based on the same subject matter raising the same issues. Additionally, the Liquidators are asking the US Court to grant as against the appellants and others, declaratory and substantive relief pursuant to section 249 of the BVI Insolvency Act (the "IA") on the basis that the redemptions constituted voidable transactions under the provisions (sections 244 -246) of the IA (the "section 249 Claims" or the "statutory avoidance Claims"). Pursuant to section 273 of the IA, the appellants moved the court to exercise its supervisory power over the Liquidators, in essence, restraining them from pursuing the US Proceedings on the basis that they are "persons aggrieved" by the Liquidators' decisions and/or actions in pursuing the US Proceedings. Alternatively, the appellants sought an anti-suit injunction to restrain the pursuit of the US Proceedings by the Liquidators on the basis that such pursuit constitutes vexatious and/or oppressive conduct on the basis that the issues in the US Proceedings were already finally decided in Migani and also on the basis that the US Court cannot grant IA, section 249 relief. The learned judge dismissed the appellants' applications. The appellants appealed contending that the learned judge erred in his approach to determining the question of standing and that they are „persons aggrieved" within the meaning of section 273. They argue that the US restitution claims are met by estoppel and the broader doctrine of abuse of process. The appellants further argue that only the BVI court could grant IA section 249 relief and thus pursuit of such relief before the US Court was hopeless and therefore oppressive. Held: dismissing the appeal and awarding costs to the respondents to be borne by the appellants at two thirds of the costs assessed on the applications in the court below in accordance with rule 65.13 of the Civil Procedure Rules 2000, that:
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		1. The phrase “person aggrieved” must take its meaning and colour from the context of the statute in which it appears. The question, in this case, must then be whether, having regard to the context of section 273 of the BVI Insolvency Act (the “IA”), and the remedy which is thereby given, namely, „confirming, reversing or modifying the act, omission or decision of the officeholder“, a person who has no proper or legitimate interest in a liquidator’s decision, act or omission in respect of an insolvent company’s estate may be said to be a “person aggrieved.” In the context of section 273, a person cannot be considered as being “aggrieved” unless that person has a sufficient interest in the outcome of an act, omission or decision taken by a liquidator in the liquidation or shortly put, a sufficient interest in the relief sought. Intertrade Corporation v Windjammer Landing Co. Ltd. SLUHCVAP1996/0006 (delivered 24th November 1997, unreported) followed; Sevenoaks Urban District Council v Twynam [1929] 2 KB 440 applied. 2. It is important to identify, for the purpose of section 273, the capacity in which a person is praying in aid the relief being sought. In this case, the appellants do not suggest that they have any interest in the assets of Sentry or the way they are to be distributed or spent. They invoke section 273 of the IA as mere defendants in the US proceedings. In such capacity, the appellants are strangers to the liquidation and have no legitimate interest in the relief sought. Accordingly, the appellants have no standing under section 273 of the IA to apply for the restraint of the Liquidators in pursuing the US proceedings. There is therefore no reason for disturbing the learned judge’s decision refusing the application to grant relief.
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		Re. Edennote Ltd [1996] BCLC 389 applied; Deloitte & Touche AG v Johnson [2000] 1 BCLC 485 applied. 3. The US Claims are not in respect of the same redemption payments as were before the BVI Court. Although the claims arise from similar redemption payments, the factual context requires ventilation of other considerations as pleaded in those claims. The questions raised are all arguable and it would be inappropriate for this Court to seek to make a summary determination as to the merits or demerits of these issues which have been squarely placed before the US Court in the US Proceedings. The effect of Migani is therefore within the purview of the US Bankruptcy Court to be decided within the context of the US Claims and this Court should not seek to preempt its consideration. Further, the appellants have already availed themselves of the foreign procedure dealing with vexation and oppression in the US Courts. 4. The word “Court” in section 249 of the IA is not an expression giving exclusive jurisdiction to the BVI Court to treat with statutory avoidance claims and for granting relief. It is a procedural or allocation provision which merely directs where a claim may be made. It is clear from the IA itself that there is full recognition of cross-border cooperation. This is encapsulated in Parts XVIII and XIX which deals with cross-border insolvency and orders which may be made in aid of foreign proceedings. These parts of the IA capture the essence of reciprocity and comity between countries in insolvency matters. In this case, there is no good reason for prohibiting the US Bankruptcy Court from rendering assistance to the BVI main insolvency which may inure to the fair and equal treatment of all the Funds’ creditors. Further, the BVI Court can exercise no personal jurisdiction over the bulk of the parties in the US Proceedings. In this context, this cannot be
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		viewed as harassment or as being vexatious and oppressive to the appellants, nor can it be perceived as an affront to the BVI Court or its processes. Accordingly, the appellants have not discharged the burden of demonstrating that the statutory avoidance claims are hopeless and that the Liquidators should be enjoined from the pursuit of them. In Re Hellas Telecommunications (Luxembourg) II SCA524 B.R. 488 (Bankr., S.D.N.Y., 29.1.2015) cited.
Case Name:		Alcedo Tyson v The Queen BVIHCRAP2013/0008
Date:		Monday, 20th November 2017
Coram:		The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Patrick Thompson
	Respondent:	Mrs. Tiffany R. Scatliffe Esprit, Principal Crown Counsel and Mr. O'Neil St. A. Simpson, Crown Counsel
Issues:		Criminal appeal - Jurisdiction of the Court of Appeal – Whether on a criminal appeal the Court of Appeal has jurisdiction to entertain as a ground of appeal a

		constitutional point not taken in the High Court – Section 31 of the Virgin Islands Constitution Order 2007 - Section 41 of the West Indies Associated States Supreme Court (Virgin Islands) Act – Whether a constitutional point not taken in the High Court arises properly on appeal – Right to a fair trial - Whether appellant’s constitutional right to a fair trial has been contravened – Crown’s unlimited right to stand by jurors – Constitutionality of section 27 of the Jury Act – The principle of equality of arms – Whether unlimited right to stand-by jurors justifiable in the public interest- Impartiality of tribunal – Whether actual bias necessary to establish that the appellant had an unfair trial.
Result and Reason:		On 24th June 2013, the appellant, Alcedo Tyson, was convicted of the offence of murder. He was sentenced on 12th July 2013 to a term of life imprisonment without the possibility of parole. At his trial, the Crown stood by 21 potential jurors. The appellant appealed against his conviction on 8 grounds. The first and only ground considered by the Court is that the Crown’s unlimited right to stand-by jurors made his trial unfair and was in breach of his constitutional right to a fair trial. This point was not taken by the appellant at his trial in the High Court. Therefore, the issue arose as to whether the Court of Appeal has jurisdiction to entertain a constitutional point that had not been raised in the court below. On the issue of jurisdiction, the appellant argued that since section 41 of the West Indies Associated States Supreme Court (Virgin Islands) Act gives the Court of Appeal the discretion, if necessary or expedient in the interest of justice, to exercise any or all of the powers conferred by section 32 of that Act, it follows that the Court of Appeal has the power to make such order as the High Court might have made or ought to have made as the circumstances of the case requires. Further, that the Court of Appeal’s extensive powers on the hearing of civil appeals apply mutatis mutandis to the hearing of criminal appeals. Notably, the appellant submitted that section 31(2) of the Act provides that the power of the Court of Appeal under the section may be exercised notwithstanding that no

		notice of appeal or respondent's notice had been given in respect of any particular part of the decision of the High Court or by any particular party to proceedings in that court. The Court of Appeal is thus empowered to make such order as the nature of the case requires and consequently the Court of Appeal is empowered to hear and determine ground 1 of his amended notice of appeal. In response, the Crown submitted that the Court of Appeal does not possess the jurisdiction to entertain the constitutional ground of appeal. It was submitted that section 31(2) of the Virgin Islands Constitution Order 2007 provides that in alleged contraventions of the Constitution, the High Court has original jurisdiction. Further, that section 31(7) of the Constitution provides that the High Court is the appropriate forum to refer challenges that relate to the enforcement of the Constitution. It was submitted that in matters of enforcement of constitutional provisions, the Court of Appeal and the Privy Council only have appellate jurisdiction. As it relates to the substantive ground of appeal, the basis of the appellant's contention is that: (i) section 27 of the Jury Act, which provides the Crown with the unlimited right to stand-by jurors, is unconstitutional as it offends the equality of arms provision enshrined in section 16 (the fair hearing provision) of the Virgin Islands Constitution; (ii) the Crown's unlimited right to stand-by jurors is likely to lead the fair-minded observer to find that the selection of an independent and impartial tribunal was biased; (iii) that once the appellant's right to a fair trial was breached, the appellant's conviction ought to be set aside. In response, the Crown argued that: (i) any imbalance resulting from the unlimited right of stand-by is justified, proportionate and reasonable as the right of stand-by is required in the public interest to ensure that a competent and impartial jury is selected; (ii) the right of stand-by is dichotomous from a successful challenge of a juror for cause, and (iii) the Crown has consistently used its right of stand-by in a reasoned and responsible manner and there was no evidence presented at trial or before this Court which substantiates that any prejudice or actual bias was
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		employed in the jury selection process. Held: allowing the appeal, setting aside the conviction and sentence and remitting the matter to the court below for retrial, that: 1. On a proper construction of section 31(7) of the Virgin Islands Constitution Order 2007 (“Constitution Order”), questions arising as to the contravention of any of the provisions of Chapter 2 of the Constitution Order, in what are substantively non-constitutional proceedings in the Court of Appeal, can be determined within the non-constitutional proceedings by the Court of Appeal without the necessity of bringing a separate constitutional application before the High Court. In the instant case, the Court of Appeal does have jurisdiction under section 31(7) of the Constitution Order to entertain the first ground of appeal, that is, a constitutional point which was not taken in the High Court if it properly arises on appeal. When a constitutional point arises on a criminal appeal, once it is a challenge that goes to either the validity of the conviction when made or the lawfulness of the sentence when passed, it may be raised for the first time and dealt with on appeal. Section 31 of the Virgin Islands Constitution Order 2007 applied; Ong Ah Chuan v Public Prosecutor [1981] AC 648 applied; Runyowa v The Queen [1967] 1 A.C. 26 applied; Mohama Kunjo s/o Ramalan v Public Prosecutor [1979] A.C. 135 applied. Bowe (Junior) & Anor v R 2006 UKPC 10 applied; Walker v The Queen [1994] 2 A.C. 36 distinguished; Hunte and Khan [2015] UKPC 33 distinguished. 2. The principle of equality of arms centers on achieving basic and reasonable proportionality as it has been accepted that it is not possible to achieve a perfect equality between the parties. Therefore, not all inequalities will result in a breach of the principle of equality of arms and amount to a violation of the constitutional
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		right. 3. The Crown's unlimited right of stand-by is not justifiable in the public interest as section 28 of the Jury Act allows the Crown to challenge a juror for a cause if, in the opinion of the presiding judge, it is improper or inadvisable for the juror challenged to be impaneled. Therefore, the Crown would not be disadvantaged in the selection of a competent jury by the removal of the unlimited right of stand-by. R v Andre Penn BVIHCR2009/0031 (delivered 18th February 2015, unreported) applied; Craig Alexander Bain v Her Majesty the Queen and The Attorney General of Canada [1992] 1 S.C.R. 91 applied; Porter v McGill [2001] 2 A.C. 357 applied; The Queen v Kerris Phipps BVIHCR2009/0026 (delivered 18th November 2010, unreported) disapproved. 4. The tribunal must be independent and impartial but must also be perceived to be independent and impartial. Millar v Dickson [2002] 3 All ER 1041 considered; Porter v Magill [2002] 2 A.C.357 considered. 5. Section 27(b) of the Jury Act is unconstitutional due to the extreme disparity it creates in the jury selection process. The section permits the infringement of the principle of equality of arms by making the position of the accused extremely weaker than that of the Crown. Further, section 27(b) infringes the substantive fundamental right to a fair trial by an impartial court as the perception of bias in the selection process may result in the perception of bias during the trial. In this case, the Crown stood by 21 potential jurors without ascribing any cause. It is likely that a fair minded and informed observer would conclude that there was a real possibility of bias in the actual jury
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		selection process of this trial and consequently in the performance of the jury and the trial itself. Therefore, the appellant's constitutional right to a fair trial by an impartial court was infringed. Section 27(b) of the Jury Act, Cap. 30, Revised Laws of the Virgin Islands 1991 applied; R v Andre Penn BVIHCR2009/0031 (delivered 18th February 2015, unreported) applied.
Case Name:		Robin Kensworth Montgomery Yearwood v Christiana Yearwood ANUHCVAP2015/0018 ANUHCVAP2015/0019
Date:		Tuesday, 21st November 2017
Coram:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise Blenman, Justice of Appeal The Hon. Mr. Reginald Amour, SC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. David Joseph, QC, and with him Ms. Andrea Smithen
	Respondent:	Dr. David Dorsett, and with him, Mr. Jarid Hewlett
Issues:		Civil appeal – Consolidated appeals – Family proceedings – Rights to reciprocal enforcement of foreign monetary judgments under section 3(1) of the Reciprocal Enforcement of Judgments Act, Cap. 369 of the Revised laws of Antigua and Barbuda 1992 – Whether the learned judge erred in ruling that there was power to register the foreign judgment in family

		proceedings outside of the jurisdiction in accordance with Part 72 of the Civil Procedure Rules (“CPR 2000”) – Power of the Court to enforce foreign judgments – Whether the delay in filing the default costs certificate for enforcement of judgment amounts to inability to pursue enforcement of foreign monetary judgment – Estoppel – Res judicata – Rules 2.2 (3) and Part 72 of the Civil Procedure Rules 2000.
Result and Reason:		The decree absolute was issued by the High Court of England on 18th December 2009, dissolving the marriage of Robin Yearwood, the appellant and Christiana Yearwood, the counter-appellant. Prior to this, Christiana Yearwood applied for financial provision and property adjustment orders. An order was granted by Phillip Moor, QC, Deputy High Court Judge, Family Division on 7th December 2009 („the 7th December Order”) awarding a lump sum of £4,121,000.00 (“the lump sum”). Thereafter, on 10th May 2010 the learned Deputy Judge made a further order (“the 10th May UK Order”), ex parte for Robin Yearwood to pay the outstanding lump sum balance of £3,144,456.80 from the said 10th May UK Order. The proceedings which led to these appeals commenced on 31st May 2010, whereby Christiana Yearwood applied to the High Court of Justice, Eastern Caribbean Supreme Court to have the prior order, that is the 10th May UK Order registered pursuant to the Reciprocal Enforcement of Judgments Act, Cap. 369, Revised Laws of Antigua and Barbuda 1992 (“the Act”). On 8th December 2011, Michel J set aside his previous ruling to allow the registration of the 10th May UK Order, previously applied for by Christiana Yearwood on the said 31st May 2010. On 12th November 2010, Christiana Yearwood was granted a default costs certificate in the United Kingdom to certify costs payable in the original action against Robin Yearwood amounting to £592,602.33 with interest commencing on the 7th December, 2009. Additionally, based on the inter parte application of Christiana Yearwood on 9th July 2012, the learned Moor J, QC made a further order discharging the 10th May UK Order and, setting out the monies due to Christiana Yearwood pursuant to 7th December Order totalling the sum of £1,882,851

		(together both referred to as “the further order”). On 27th June, 2013, Christiana Yearwood applied to register the Default Costs Certificate of 12th November 2010, and, the further order (together both referred to as the “2013 registration application”), additionally, seeking the costs of the 2013 registration. On 24th July 2013 , Robin Yearwood sought the declaratory relief to disentitle Christiana Yearwood from registering any judgments, orders or directives resulting from the UK proceedings, Claim No. FD08D00763, as well as an injunction to restrain the registration of any such judgment, order or directives, in addition to damages and costs of this action. Further, Robin Yearwood applied for summary judgment under the Civil Procedure Rules 2000 (“CPR 2000”) purporting that Christiana Yearwood’s defence has no real prospect of success as the issues in contention were previously decided by Michel J in judgment dated 8th December 2011, on the basis of the application of the doctrines of estoppel and res judicata and, alleging abuse of process by Christiana Yearwood. Henry J heard and dismissed the summary judgment application of Robin Yearwood and found that although Part 72 of the CPR did not govern the registration of foreign judgments under the Act, it did not exclude the registration of money judgments obtained in family proceedings. In addition, Henry J ruled that the prior decision of Michel J did not provide a basis for the application of the principles of res judicata or estoppel nor abuse of process. Further, the learned Henry J heard and found in favour of Christiana Yearwood by granting part of the application for the 2013 registration of the further order under the Act, however refusing registration of the default costs certificate. Henry J found that the certificate issued on 12th November 2010 and the application were outside the time limit specified by section 3(1) of the Act and could not be registered within the jurisdiction of Antigua and Barbuda. Both parties, dissatisfied with the decisions of Henry J dated 1st June 2015 appealed to this Court.
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		Held: dismissing the appeal and allowing the counter-appeal, with costs of both here and below to be assessed if not agreed, that: 1. It is more a proper construction exercise in reference to primary and secondary legislation that, the rule (or indeed the absence of prescribed rules) may not limit the amplitude of the statute. The Reciprocal Enforcement of Judgments Act, Cap. 369, Revised Laws of Antigua and Barbuda permits that where the final adjudication of debt has been given, an obligation then exists which cannot thereafter in that court be disputed. Ergo, a foreign judgment is capable of registration in a local court and gives credit to that judgment through its enforcement by virtue of section 9(1) of the UK Administration of Justice Act 1920 ("AJA 1920") subject only to the limitations expressly outlined by section 9(2). Nouvion v Freeman (1889) 15 App. Cas. applied. 2. Sections 9(1) and 9(2)(a) – (e) of the UK Administration of Justice Act 1920 are ingrained to sections 3(1) and 3(2)(a) – (e) of the Reciprocal Enforcement of Judgments Act, Cap. 369, Revised Laws of Antigua and Barbuda to demonstrate that the Act and AJA 1920 are to be construed and applied in tandem to facilitate the registration of foreign judgments. A judgment obtained by a party whereby a sum of money is payable in civil proceedings falls within the definition of "judgment" in section 2(1) of the Act, properly construed and applies to a judgment for lump sums finally adjudged as due and owing in family proceedings. In the case at bar, Robin Yearwood argued that the learned judge erred in law by permitting the registration of the further order under the Act, despite the CPR"s express inapplicability to family proceedings; (b) further, the Act was not intended to allow for the registration of judgments in family proceedings; (c) the judgment which was
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		permitted to be registered was outside of the time limit provided by section 3(1) of the Act; and that (d) the learned judge erred by incorrectly refusing to dismiss Christiana Yearwood’s application on the grounds of issue estoppel/abuse of process. The learned judge was correct to dismiss Robin Yearwood’s motion on this basis as the argument was without merit, as such, the Act should be ordinarily and naturally applied to a judgment or order obtained in family proceedings within the ambit of civil action. Owens Banks Ltd. v Bracco [1992] 2 A.C 443 applied; Beatty v Beatty [1924] All ER 314 applied. 3. In determining whether the delay in filing the default costs certificate for enforcement of judgment amounts to inability to pursue enforcement of a monetary judgment, much will turn on the wording of the Act. In the case at bar, nothing in the wording of the Act would allow for the time limit prescribed for which Robin Yearwood submits. The phrase “any civil proceedings” is consistent with the definition of “judgment” under section 2(1) of the Act therefore capable of registration. Further, section 3(1) of the Act permits the local court to allow for a longer period once it considers it just and convenient in all the circumstances that the judgment should be enforced in Antigua and Barbuda. The court retains discretion on the true construction of the Act as a whole to permit the registration nonetheless. The learned judge erred in her judgment in refusing to allow the registration of the default costs certificate as she failed to direct her mind to the question of whether an extension of time was just and convenient having regard to all the circumstances thereby exercising judicial discretion. It is clear that the learned judge erred by failing to consider relevant and material circumstances for the inordinate delay and as such this ground of appeal is allowed and Christiana Yearwood’s
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		2013 registration application of the further order under the Act and registration of the Default Costs Certificate previously issued on 12th November 2010 as enforcement of said further order is granted. Quinn v Pres-T-Con Limited [1986] 1 WLR 1216 applied.
Case Name:		Joseph W. Horsford As Sole Administrator of the Estate of William Horsford (Deceased) v [1] Geoffrey Croft [2] Eric Construction & Heavy Equipment Services Ltd ANUHCVP2014/0028
Date:		Friday, 24 th November 2017
Coram:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mde. Clare Henry, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	In person
	First Respondent:	Mr. Dane Hamilton Jr.
Issues:		Civil appeal – Trespass - Right of user – Easement of necessity – Whether respondent entitled to a right of way as a matter of necessity over the appellant's land (Parcel 281) – Whether trial judge misapplied the principle in Dabbs v Seaman [1925] 36 CLR 538 - Whether right of way granted by sale agreement more apparent than real – Whether respondent encroached

		on appellant's land (Parcel 281) –Whether there is a boundary dispute between the parties – Prescribed costs
Result and Reason:		The appellant, Joseph W. Horsford, is the sole administrator of the Estate of William Horsford (deceased). The deceased's estate includes land comprising 30 acres registered as Registration Section Falmouth and Bethesda Block 34 2482B, Parcel: 26 with absolute title in the name of the appellant. Parcel 26 underwent a number of mutations and in 1996 the remainder was held as Parcel 196 with a strip of land extending from Parcel 100 to Parcel 171 on the west and Parcel 143 to Parcel 158 on the east. The strip of land was subsequently registered as Parcel 281 and the remaining lands as Parcel 280. The land, then registered as Parcel 171, was sold to Ms. Joanna Tobitt and subdivided into Parcels 217 and 218. The first respondent, Geoffrey Croft, purchased Parcel 217 from Ms. Tobitt. Parcel 217 adjoins Parcel 281. The appellant, in the court below, claimed against the first respondent for the following: (a) a declaration that the first respondent has no right of user of Parcel 281 as access to his own property or for any other purpose whatsoever; (b) damages; (c) an injunction ordering the first respondent not to enter, without lawful permission, upon the appellant's land, whether by foot, motorized vehicle or by any other means; (d) Mesne profit for the period 1st October 2008 to date of issuance of the Claim Form, and (e) interest and costs. The first respondent counterclaimed for (a) a declaration that he is entitled to a vehicular and pedestrian easement of necessity over Parcel 281;(b) an order directing the Registrar of Lands to register the said easement of necessity in favour of Parcel 217 on the register of both Parcel 217 and Parcel 281;(c) an injunction to restrain Mr. Horsford from interfering, whether by himself his servants or agents, with the first respondent's free and uninterrupted vehicular and pedestrian use of the said Parcel 281 as a right of way to the public road (d) damages; and (e) costs.

	The learned trial judge dismissed the claim and gave judgment in favour of the first respondent on the counterclaim. The appellant appealed arguing, inter alia, that: (i) the learned trial judge failed to take into account the differences in the circumstances of the case at bar and that in <i>Dabbs v Seaman</i> [1925] 36 CLR 538 and has erred in principle by wrongly applying facts in both cases without taking into account the provisions of The Common Law (Declaration of Application) Act, Cap 92, Laws of Antigua and Barbuda in arriving at his judgment; (ii) the learned trial judge misdirected himself as he seemed to misunderstand which parcel of land was transferred in fee simple to the personal ownership of the appellant and has erred in ignoring the expressed intentions of the parties at the time of the transfer of Parcel 171 to the subsequent owners who later subdivided and sold to the first respondent, and (iii) the learned trial judge erred in law by ignoring the first respondent's confession of his encroachment on the claimant's land by his admission that the land belongs to the Estate of William Horsford. In response, the first respondent submitted that: (i) he is a successor in title of Parcel 217 which requires and has always since its creation required an easement of necessity to the public road over Parcel 281; (ii) without the said easement of necessity, the respondent and any owners and users of Parcel 217 have no usable access to the public road; (iii) the right of way created by the sale agreement is in fact and in law apparent but not real; (iv) there is no encroachment over the claimant's land as the land in question belongs to the Estate of William Horsford, deceased. Held: allowing the appeal and setting aside the order of the learned trial judge, and awarding costs to the appellant in the court below on the prescribed basis on the amount ordered to be paid and on appeal two-thirds of that sum pursuant to rule 65.13 of the Civil Procedure Rules, 2000, that: 1. An easement of necessity is an easement which, under particular
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		circumstances, the law creates by virtue of the doctrine of implied grant to meet the necessity of a particular case. It is an easement which is not merely necessary for the reasonable enjoyment of the dominant tenement, but one without which that tenement cannot be used at all. Firstly, for the implication of such an easement, there must be a common owner of a legal estate in two plots of land. Secondly, it must be established that access between one of those plots and the public highway can be obtained only over the other plot. Thirdly, there must be a disposition of one of the plots without any specific grant or reservation of a right of access. On the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those easements which are necessary to the reasonable enjoyment of the property granted, and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted. Alhaji Bora Manjan v Kebba Drammeh [1991] 61 P & CR 194 applied; Wheeldon v Burrows (1879) 12 Ch. D 31 applied. 2. The principle in Dabbs v Seaman [1925] 36 C.L.R. 538 is that “where, a registered proprietor of land ... transfers to B a part of his land described by a plan indicating that the transferred land is bounded on one side by a 20 ft land situated on the other part of the transferor’s land and the transfers duly registered, then in the absence of either a provision to the contrary on B’s certificate of title or some subsequent personal legal or equitable relation to the contrary between B and owner of the adjoining land B, as long as he remains registered proprietor of the land so transferred and described is entitled to: (1) to have the land marked twenty feet land preserved as such, and (2) to have a right of way over the land“. In the instant case, the Estate of William Horsford never transferred to the first respondent a part of Parcel 171. It was
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		the owner of Parcel 171, Ms. Joanna Tobitt, who subdivided same into two parcels, and sold one of the parcels to the first respondent. Parcel 281 is not part of the lands retained by the owner of Parcel 171. Therefore, the principle set out in Dabbs v Seaman is not applicable to the present circumstances as there is no common ownership or common grantor between the appellant and the first respondent in respect of Parcel 217. Dabbs v Seaman [1925] 36 C.L.R. 538 distinguished. 3. Based on the sale agreement between the appellant in his personal capacity and Ms. Joanna Tobitt, an express easement was granted over the lower or western road to Ms. Tobitt on the transfer of Parcel 171 to her. There is no evidence in the record of Parcel 171 ever enjoying an easement or right of way over the upper or eastern road of which the right of user is claimed by the respondent. Further, there was no finding by the learned trial judge that the lower road did not in fact lead to the public road or that the lower road would take the user over lands of a stranger to the grant. Therefore, the first respondent has no right of user as a matter of necessity over the appellant's land, Parcel 281. A right of way across the appellant's land could not be granted on the basis that it was a more convenient way. 4. Where an absolute owner of land brings an action for trespass against a person alleged to be in possession, all that the owner has to prove is his title and an intention to regain possession. If the defendant either admits the claimant's ownership or is faced with evidence, which the court accepts, that the claimant is in fact the owner, the burden is on the defendant to confess and avoid by setting up a title or right to possession consistent with the fact of ownership vested in the claimant. The first respondent, by his own admission, has
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		encroached on the appellant's land as the appellant is the absolute owner of the lands in question in his capacity as sole administrator of the Estate of William Horsford and the evidence of the first respondent's encroachment contained in the surveyor's report remains unchallenged. Further, the claim is not a boundary dispute as the land which is the subject of the encroachment is not owned by the first respondent. Portland Management Ltd v Harte and Others [1976] 1 All ER 225 applied.
Case Name:		SHEIKH MOHAMED ALI M ALHAMRANI SHEIKH SIRAJ ALI M ALHAMRANI SHEIKH KHALID ALI M ALHAMRANI SHEIKH MOHAMED ALI M ALHAMRANI (as representative of the estate of the late SHEIKH ABDULAZIZ ALI M ALHAMRANI) SHEIKH AHMED ALI M ALHAMRANI SHEIKH FAHAD ALI M ALHAMRANI v SHEIKH ABDULLAH ALI M ALHAMRANI [BVIHCMAP2016/0030]
Date:		Friday, 24 th November 2017
Coram:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Mario F. Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Lynton Tucker and Mr. James Brightwell
	Respondent:	Ms. Elizabeth Jones, QC
Issues:		Commercial appeal – Assessment of costs – Burden

		of proof in cost assessment proceedings – Whether the learned judge effectively reversed the burden of proof and required the paying party to prove that the disputed items of the claim were unreasonable and should not be allowed – Whether the learned judge made errors in principle in conducting the cost assessment proceedings – Whether the learned judge improperly exercised his discretion during the cost assessment proceedings
Result and Reason:		This is an appeal regarding costs awards amounting to US\$9,361,244.02 plus interest of US\$1,172,000.96 made by a judge of the Commercial Court in favour of the respondent, Sheikh Abdullah Ali M Alhamrani (“Sheikh Abdullah”), in respect of proceedings between the appellants and Sheikh Abdullah in the Commercial Court and the Court of Appeal. The appellants were dissatisfied with the awards made by the learned judge and have appealed to this Court. The appellants and Sheikh Abdullah are the children of the late Sheikh Ali M. Alhamrani (collectively referred to as “the siblings”) who died in 1976. The family carried on various businesses in the United Arab Emirates, including a joint-venture with a German lubricants manufacturer called Fuchs Petroleum Saudi Arabia (“Fuchs”). Fuchs Oil Middle East Limited (“Fomel”), a British Virgin Islands company, was one of the companies used by the joint-venture. Chemtrade Limited (“Chemtrade”), another BVI company, owns 50% of the shares of Fomel, and Fuchs owns the remaining 50% of the shares. The siblings owned the shares in Chemtrade. In or about 2000 unhappy differences developed between Sheikh Abdullah and the appellants. The disputes were referred to a court in Saudi Arabia and the proceedings in that court resulted in an agreement between the siblings in April 2008 regarding the distribution of the assets of the joint-venture. Essentially the agreement provided that Sheikh Mohamed, one of the siblings, would value the businesses and Sheikh Abdullah would have the option of either purchasing the appellants’ shares or selling his shares to them, in either case at the value

		determined by Sheikh Mohamed. Sheikh Abdullah opted to purchase the appellants' shares. A further dispute then developed between the siblings as to whether the shares that the appellants owned in Chemtrade were included in the sale. Sheikh Abdullah's position was that the disputed shares were included in the sale to him and, when completed, would make him the majority shareholder of Chemtrade. In January 2010, he commenced proceedings in Saudi Arabia claiming ownership of the disputed shares. He also excluded the appellants from Fomel's affairs. In November 2010, Chemtrade commenced an unfair prejudice claim against Fomel in the BVI Commercial Court seeking an order that either Fomel or Fuchs purchase its shares in Fomel ("the unfair prejudice claim"). In July 2011, Sheikh Abdullah commenced separate ownership proceedings in the Commercial Court in respect of the disputed shares ("the ownership claim"). At a directions hearing for both cases before the judge of the Commercial Court in November 2011, Sheikh Abdullah agreed to pursue the BVI ownership claim instead of the extant ownership proceedings in Saudi Arabia. The learned judge entered a consent order that the ownership claim and the unfair prejudice claim be tried together, and that each party in either action shall give standard disclosure to all the other parties ("the Consent Order"). The two claims were not consolidated. The trial of the joint claims took place over a period of 32 trial days between September and November 2012. The learned judge delivered his judgment in December 2012. He dismissed Sheikh Abdullah's claim and allowed Chemtrade's unfair prejudice claim but did not order a buyout of its shares. Instead, he ordered that the articles of association of Fomel be amended to avoid any future deadlock in the company's board of directors. The learned judge heard submissions on costs in February 2013 and delivered his decision in March 2013. The judge ordered Sheikh Abdullah to pay 100% of 40% of the appellants' overall costs of the joint trial, but he reduced Sheikh Abdullah's share of
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	the responsibility for the costs to 70% of the 40% on account of certain aspects of the appellants' conduct during the litigation. Sheikh Abdullah was therefore required to pay 28% (70% of 40%) of the appellants' agreed or assessed costs of the combined proceedings. Sheikh Abdullah appealed against the judge's order refusing his claim to the disputed shares. The appeal was heard by the Court of Appeal over a period of five hearing days in July 2013. In a judgment delivered in September 2013, the Court of Appeal allowed Sheikh Abdullah's appeal and set aside the judgment in the court below, and, having found that the disputed shares were included in the buy-sell agreement, ordered that they be transferred to Sheikh Abdullah or his order within 28 days. The Court of Appeal also ordered that the appellants pay Sheikh Abdullah's costs of the appeal and of the trial in the court below, to be assessed if not agreed. The Court of Appeal made a further order in November 2013 staying the execution of its judgment until the final disposal of the appellants' appeal to the Privy Council. The appellants' appeal to the Privy Council was dismissed and they were ordered to pay Sheikh Abdullah's costs before the Privy Council and in the Court of Appeal, both on a standard basis. The Privy Council also affirmed the Court of Appeal's order for the costs at first instance. The hearing of the assessment of Sheikh Abdullah's costs took place before a judge of the Commercial Court, over a period of four days in June 2016. The learned judge was presented with a list of 28 disputed points and it was agreed he would hear counsel on each point and then make rulings on the points as the hearing progressed. The judge did not produce a written judgment. At the end of the costs hearing the learned judge ordered that: a. The appellants pay Sheikh Abdullah's costs of the High Court proceedings in the sum of \$7,804,361.20 with interest in the sum of
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		\$1,086,196.02, continuing at the daily rate of \$1069.09. b. The appellants pay \$934,026.83 in respect of Sheikh Abdullah's costs of his appeal to the Court of Appeal and \$436,697.33 in respect of Sheikh Abdullah's costs of the stay application, together with interest of \$72,479.39 and continuing at the daily rate of \$187.77. c. The appellants pay Sheikh Abdullah's costs of \$186,158.66 together with interest of \$13,325 and continuing at the rate of \$20.89 per day in respect of an application for a freezing injunction made by Sheikh Abdullah to the Court of Appeal. The appellants appealed against these orders. The notice of appeal lists 20 grounds of appeal. Grounds 1 to 4 deal with different aspects of the burden of proof in costs assessment proceedings, in particular the appellants' complaint that the learned judge effectively reversed the burden of proof and required them, as the paying party, to prove that the disputed items of the claim were unreasonable and should not be allowed. Grounds 5 to 20 allege errors of principle in the assessment not just in the exercise of the judge's discretion. Held: allowing the appeal on grounds 9 to 13 to the extent of reducing the amount awarded from £600,000 to £480,000, and on ground 18 by ordering that the amount awarded for travel time be recalculated at the rate of one-half of each fee earner's normal hourly rate, to be assessed by a judge of the Commercial Court if not agreed by the parties within 21 days, dismissing the appeal on all other grounds and making the orders in paragraph 87 numbered 4-6 of this judgment, that: 1. The assessment of the costs in this matter was undoubtedly one of, if not the largest and most complicated assessments ever undertaken in the BVI. The judge was faced with a difficult task and had to find sensible and practical means to complete the detailed assessment within the four days allocated for the hearing. The judge was entitled to employ a broad-brush
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		approach to the assessment rather than a line by line assessment. 2. It is settled law in the Eastern Caribbean that section 11 of the Eastern Caribbean States Supreme Court (Virgin Islands) Act can be used to import the law and practice in the High Court of Justice in England but only where there is no local law or practice covering the point. Part 65.2 of the Civil Procedure Rules 2000 (“CPR 2000”) sets out where the burden of proof lies in an assessment of costs and outlines the basic principles that the assessor should follow when carrying out an assessment. Rule 44.3 of the English Civil Procedure Rules 1998 covers substantially the same ground as Part 65.2. Therefore, there is no room for the application or operation of rule 44.3 of the English CPR in the BVI. Leeward Islands Resorts Limited v Charles Hickox ANUHC VAP2008/003 (delivered 22nd March 2010, unreported) followed; Part 65.2 of the Civil Procedure Rules 2000 applied; section 11 of the West Indies Associated States Supreme Court (Virgin Islands) Ordinance applied; Rule 44.3 of the English Civil Procedure Rules 1998 distinguished. 3. The finding that rule 44.3 of the English CPR does not apply in the BVI means, for example, that the English rule that in an assessment on a standard basis any doubt as to whether any costs were reasonably and proportionately incurred or were reasonable and proportionate in amount should be resolved in favour of the paying party does not apply in the BVI. The position in the BVI is captured by the learned judge’s finding that in the BVI there is no bias one way or the other and the burden of proof rests throughout on the receiving party to prove that the costs claimed are reasonable and fair to both the paying party and the receiving party. If the receiving party proves on a balance of probabilities that the claim is reasonable and fair, he or she is generally
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		entitled to that item in full or to so much of it as the court finds to be reasonable and fair. If he or she does not discharge this burden the claim will fail. 4. The judge proceeded on the basis for assessing costs under the CPR 2000 by determining what was reasonable and fair between the parties. In carrying out this exercise he found that some or most of the items in the bills were reasonable and proportionate and therefore there was no reason not to allow the full amount of such fees. This is a proper way to proceed in an assessment in the BVI and it does not amount to applying an indemnity basis. 5. The learned judge satisfied himself that Sheikh Abdullah had discharged the burden of proving the reasonableness of the fees claimed. The allowance of 100% recovery on some items occurred when the judge was satisfied that those fees were reasonable and fair to both parties. Had he stopped at that point there could be no complaint because he had by then done all that the CPR 2000 required of him. The fact that he then gave the appellants an opportunity to give examples of what they claimed were unreasonable fees, and they failed to do so, is not reversing the burden of proof. 6. There are very limited circumstances when an appellate court will interfere with the exercise of the trial judge's discretion. It is settled law that an appellate court will not interfere with the exercise of the learned judge's discretion unless it is satisfied that he committed an error and that as a result of that error his decision exceeded the generous ambit within which reasonable disagreement is possible, and was clearly or blatantly wrong. Reductions made by the trial judge for counsel liason fees were matters entirely within his discretion and based on the general principles regarding how this Court should approach reviewing the exercise
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		of a judge's discretion, there is no basis to interfere with the judge's findings and reductions. It would have been different had the judge not taken account of the client representative principle as such a failure may have given rise to an error of principle. Dufour and others v Helenair Corporation and others (1996) 52 WIR 188 followed. 7. The Consent Order is consistent with the position that the parties had taken in correspondence. The Order required each party to give standard disclosure to all other parties which means disclosure of all documents in the possession or control of a party. The learned judge was correct in finding that Sheikh Abdullah was directed and required by the Consent Order to disclose all documents in both proceedings over which he had control. These documents included the Fomel documents which were undisputedly under Sheikh Abdullah's control. The judge then went on, as he was required to do, to find that it was entirely fair and reasonable for the appellants to pay such costs without reduction. 8. A court can take into account any conduct that has the effect of unnecessarily increasing the time and costs of the proceedings and can order the party responsible for the conduct to pay the increased costs. What the court should not do is to conclude, without more, that as a result of the conduct of the paying party the receiving party should receive the full amount of dealing with the issues affected by the conduct. The court must still carry out the additional exercise of deciding what amount of the increased costs is reasonable and fair for the paying party to pay. The conduct displayed by the appellants did not obviate the need for the judge to investigate the amount of the claim and order the appellants to pay only the reasonable and fair amount of the additional costs incurred by Sheikh Abdullah. The learned judge having failed to carry out a
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		proper assessment of the costs of the Fomel disclosure, it falls to this Court to do the assessment. This Court will therefore allow this ground of appeal and assess the claim using a broad-brush approach by reducing the claim for these costs of approximately £600,000, which the judge allowed without reduction, by 20% to £480,000. 9. The judge's finding that Sheikh Abdullah's representatives incurred expenses in dealing with Fomel's business licence to operate in Sharjah in order to protect the underlying assets in dispute (Fomel) because of the position taken by the appellants in the litigation was a generous interpretation of the entitlement to costs on the facts. However, it was a finding of fact by the judge that these costs were recoverable as part of ownership proceedings to preserve the underlying assets and an exercise of his discretion in allowing recovery. There being no discernible error in the judge's findings there is no basis for interfering with his decision. 10. The learned judge's findings on the evidence that the indemnity agreements and liaising with Fuchs and Fuchs' lawyers related to the ownership claim and his ruling that the costs were therefore recoverable in full was an exercise of his discretion and this Court has no basis to interfere with this decision. 11. In determining the amount to be awarded for pre-action costs, it is a settled principle that the costs must be relevant in the sense that they were incurred to produce material that ultimately proves to be of use and service in the subsequent action. Once the claimed costs meet the test of recoverability, the amount of costs incurred must also be reasonable. The learned judge considered the time period covered by the claim for pre-action costs and went on to find that the claim was not unreasonable and allowed it in full. The judge considered the evidence and submissions of
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		counsel, the relevant principles, applied the proper test and did not err in his treatment of the assessment of these costs. There is no basis for interfering with his decision. Olive Group Capital Limited v Mayhew BVIHC(COM)2015/115 (delivered 21st January 2016, unreported) applied; Roach and another v Home Office 2009] EWHC 312 (QB) considered. 12.It was not disputed that the overseas based lawyers in these proceedings were entitled to charge full hourly rates for work done while travelling. However, the issue of the amount that should be allowed for “down time” while travelling, i.e., sleeping and other not working activities associated with overseas travel, is an important issue in the context of the Commercial Court in the BVI, as the lawyers appearing in the court quite often have to travel across the Atlantic and even from as far as Asia. As such there is potential for significant amounts of down time on each trip. Having reviewed how the learned judge came to his decision on this issue, he should have had more regard to the differences between attending court in England and travelling overseas to attend the Commercial Court in the BVI. Such journeys can take up to two working days each way resulting in very long periods of down time. In the circumstances, the judge’s decision of allowing the full rate for down time should be varied to a more reasonable rate of one half of the fee earner’s regular hourly rate.
Case Name:		Independent Asset Management Company Limited Swiss Forfaiting Ltd

		[BVIHCMAP2015/0044]
Date:		Friday, 24th November 2017
Coram:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Mario F. Michel, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Jonathan Crow, QC, and with him, Mr. Jonathan
	Respondent:	Mr. Christopher Parker, QC, and with him Ms. Arabella di Iorio and Mr. Simon Hall for the Respondent
Issues:		Commercial appeal – Powers of directors in issuing shares – Whether issuance of shares by directors for a proper purpose – Proper purpose rule – Whether honest intentions of directors is a relevant consideration
Result and Reason:		The respondent is a British Virgin Islands company that operated as an open-ended mutual fund which specialised in investments in the field of forfeiting (“the Fund”). The Fund issued two classes of shares. The class A shares carried all the voting rights but did not entitle the holders to participate in the profits of the Fund nor in any distribution of its assets on a winding up. The class B shares carried no voting rights but shared in the profits and in the assets on a winding up. The Fund was set up by Mr. Rinaldo Invernizzi and Mr. Salvatore Chiappinelli. Mr. Invernizzi held the majority of the B shares through his company SIX SIS AG. The appellant is a Hong Kong registered company and was, up to July 2014, the sole class A shareholder of the Fund holding 100 A shares. The appellant was also the Fund’s investment manager pursuant to an investment management agreement dated 8th January 2007. Mr. Chiappinelli owns SFC Swiss Forfeiting Company Ltd (“SFC”) and through it,

		he managed the Fund. As a result of the Fund deciding to migrate to Luxembourg in 2008 and a requirement under Luxembourg law that its manager be Swiss, the Fund did not require the appellant's services. The appellant applied to the Hong Kong Companies Registry to be de-registered. The application was granted and the appellant was dissolved on 30th December 2011. The Fund wrote to the British Virgin Islands Financial Services Commission ("the Commission") advising, among other things, that it no longer intended to migrate to Switzerland, that it had suspended the payment of redemption proceeds, and that it intended to liquidate the Fund's investments. The Commission requested certain information which was only available from the appellant. Despite several requests for this information, there was no response from the appellant except a request for payment of certain unpaid invoices. By this time, there was a break down between the Fund and Mr. Chiappinelli and a reorganisation plan was devised to deal with the impasse. The plan noted that the Fund desired to issue 500 class A voting shares to CTS Nominees Ltd. On 10th July 2014, the directors of the Fund passed a resolution approving the issue of the 500 class A voting shares to CTS Nominees Ltd which shares were transferred to Sunimar Private Ltd, a Singaporean company beneficially owned and under the control of Mr. Invernizzi. The appellant's voting share was therefore reduced from complete voting control of 100% to a minority position of 16.67%. On 10th July 2014, the Fund commenced legal proceedings against SFC in Switzerland to recover sums estimated at €8.3 million held by SFC on trust for the Fund ("the July Issuance"). The appellant was restored to the Register of Companies in October 2014 and on 24th April 2015, the appellant filed its claim in the Commercial Court
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		seeking orders under sections 184I and/or 184B of the British Virgin Islands Business Companies Act (“the BC Act”) declaring the July Issuance unfairly prejudicial and/or in breach of the provisions of the BC Act, and setting aside the July Issuance. In dismissing the claim, the judge found that in issuing the 500 A class voting shares the directors were not acting for an improper purpose. They were seeking to ensure that the new shareholder had effective control of the Fund and that the appellant could not retake control and use its controlling power to thwart the Fund’s claim against SFC in Switzerland and/or block its defence of any claim by SFC for unpaid fees. The July Issuance was therefore not unfair nor in breach of the provisions of the BC Act. The judge noted that even if he had found that the July Issuance was wrongful, he could not rescind the issuance of shares because the owner of the shares, Sunimar Private Ltd., was not a party to the proceedings. In this Court, the appellant advanced that the July issuance was made by the directors for an improper purpose and was therefore in breach of section 121 of the Business Companies Act. The appellant argued that, inter alia, the judge did not follow the correct procedure in determining whether the directors acted for a proper purpose; that the judge should have held that the only purpose of the July Issuance was to dilute the appellant’s shareholding; and that the judge erred in finding that the July Issuance was done for management purposes. The respondent argued that since the appellant did not plead a proper purpose for issuing the shares, it could not succeed on this issue and; that since the July Issuance occurred when the appellant was defunct, the investment management agreement was a “dead letter” and the shares were issued to prevent the appellant influencing the litigation to the detriment of the Fund. This, they say, justified the judge finding that the directors were not acting for an improper purpose. Held: (1) allowing the appeal and setting aside the order of the learned trial judge in the court below; (2) declaring that the issue of the 500 A class voting shares to CTS Nominees Ltd on 19th July 2014 was done in breach of section 121 of the Business
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		Companies Act; and (3) awarding costs of the appeal and in the court below to the appellant, such costs to be assessed if not agreed within 21 days of the date of this order, that: 1. The foundation of the proper purpose rule lies in the fact that a company is divided into two basic organs: the board of directors and the shareholders. Directors are responsible for managing the business and affairs of the company and have the power to issue the shares as a part of that responsibility. In doing so, they must ensure that a proper balance is maintained between the two organs of the company. Eclairs Group Ltd v JKX Oil & Gas plc and others [2015] UKSC 71 considered. 2. Where there is a power struggle between different groups of shareholders, the directors should not issue additional shares in such a way as to affect the balance of power in the company or influence in any way the outcome of shareholders' resolutions, even if this results in additional capital or other benefits for the company. This restriction is not written into the company's articles and it for this reason that equity imposes on the directors the additional requirement that the shares must be issued for a proper purpose. If the directors issue shares for an improper purpose, the issue is liable to be set aside. The fiduciary obligation to issue shares for a proper purpose was incorporated in section 121 of the Business Companies Act. Hogg v Cramphorn Ltd__[1967] Ch. 254 considered; section 121 of the British Virgin Islands Business Companies Act 2004 considered. 3. The fiduciary duty that is impressed on the directors to issue shares for a proper purpose is not minimised in any way if the shares that are being issued do not have a proprietary
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		interest in the company and are not being issued for the purpose of raising capital. The rationale behind the proper purpose rule is that directors should not issue shares in a manner that could affect the balance of power between groups of shareholders in the company or to create new majorities. This is exactly what happened in this case: the directors created a new majority by the July Issuance, and it does not matter for the proper purpose rule whether the old or the new majority did not have a proprietary interest in the Fund. 4. The basic rule is that the directors' purpose, however noble, should not be used to affect the balance of power in the company. If it is used in this way, it is an improper use of the power and is liable to be set aside. 5. The trial judge having found that the substantial purpose was to create a new majority, the July Issuance cannot be saved by the directors' honest intention of trying to protect the Fund from the potential of having the appellant on both sides of the litigation in Switzerland. Further, the learned trial judge made a finding that the substantial purpose for the July Issuance was to take control of the voting power of the Fund from the appellant and hand it over to companies controlled by Mr. Invernizzi. This is an improper purpose within the meaning of section 121 of the Business Companies Act and it does not matter that the directors were influenced by other motives and reasons that may have been beneficial to the company as a whole or its remaining equity shareholder. However altruistic those motives and reasons may have been "[t]hat is not, in itself, enough." Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co. Ltd. (1968) 121 CLR 483 applied; Howard Smith Ltd v Ampol Petroleum Ltd [1974] AC 82 applied; section 121 of the British Virgin Islands Business Companies Act 2004 applied.
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		MOTIONS/APPLICATIONS
Case Name:		KMG International NV v DP Holding SA (a company incorporated under the laws of Switzerland) BVIHCMAP2017/0013
Date:		Monday, 20th November 2017
Before:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Allan Choo Choy, QC, and with him, Ms. Tameka Davis
	Respondent:	Steven Moverley Smith, QC,
Issue:		Application to revoke, discharge or vary order of single judge – Application for extension of time within which to apply for leave to file counter appeal and leave to file counter notice of appeal
Type of Oral Result / Order Delivered:		Oral Judgment with Written Reasons to Follow
Result / Order & Reason:		[Oral Delivery] 1. The Court is unanimously of the view that the Defendant does not require leave to file the counter notice of appeal. Accordingly, the decision of the single judge striking out the counter notice of appeal is set aside. 2. Costs on the application is reserved pending

		the determination of the substantive appeal. Written reasons for this decision will follow.
Case name:		Kevin Gerald Stanford v Stephen John Akers et al ANUHCVP2014/0028
Date:		Friday, 24th November 2017
Before:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	John McDonald, QC, with him,
	Respondent:	
Issue:		Leave to appeal – Security for costs
Type of Oral Result / Order Delivered :		N/A
Result / Order:		[Oral Delivery] 1. Matter stood down until Friday, 24th November 2017 at 11:00 a.m.
Reason:		The panel had to be reconstituted to hear the applications.
Case Name:		Sylvia Maduro-Dale et al v The Registrar of Lands

		[BVIHVCAP2010/0022]
Date:		Friday, 24th November 2017
Coram:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	No appearance
	Respondent:	Ms. Jo-Ann Williams-Roberts, Solicitor General
Issues:		Application to remove solicitors from the record
Type of Oral Result / Order Delivered (if applicable):		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. Application for removal of solicitor from the record is struck out.
Reason:		There was no appearance of counsel for the applicant and no reason was given for the absence of applicant/appellants counsel.
Case Name:		Ming Siu Hung, Ronald et al v J.F. Ming Inc et al [BVIHCMAP2016/0039]
Date:		Friday 24th November 2017
Coram:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

		The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Ms. Claire Goldstein
	Respondent:	Mr. Richard G. Evans
Issues:		Conditional leave to appeal to Her Majesty in Council
Type of Oral Result / Order Delivered (if applicable):		Oral Judgment or Decision
Result / Order:		1. Motion for conditional leave to appeal to Her Majesty in Council having been made out of time as conceded by the applicant, the Court has no power to treat to motion out of time by virtue of article 4 of the Appeals to the Privy Council Order 1964 of the British Virgin Islands. Motion dismissed. 2. Costs to be paid by applicant in sum of US\$3000.00.
Reason:		The application having been made out of time was dismissed as the Court had no power to extend time pursuant to Article 4 of the Appeals to the Privy Council Order 1964 of the British Virgin Islands.
		<u>HIGH COURT CRIMINAL APPEALS</u>
		<u>AGAINST CONVICTION</u>
Case name:		Wendell Varlack v The Queen

		[BVIHCRAP2012/0001]
Date:		Friday, 24th November 2017
Before:		The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Rolston Nelson, Justice of Appeal
Appearances:		
	Appellant:	Mr. Patrick Thompson
	Respondent:	Mr. O'Neil Simpson, Crown Counsel
Issue:		High Court criminal appeal against conviction – Causing death by dangerous driving – Whether conviction unsafe and unsatisfactory – Whether learned trial judge properly directed jurors on issue of alcohol consumption by the appellant – Whether evidence adduced by the crown could have established evidence of impairment – Whether there was other evidence of dangerous driving other than the evidence regarding alcohol on which the jury could have convicted the appellant
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral delivery] 1. The appeal is dismissed.
Reason:		The appellant was convicted of the offence of causing death by dangerous driving and was sentenced to 18 months' imprisonment. By his notice of appeal, he appealed both his conviction and sentence. At the hearing of this appeal, learned counsel for the appellant indicated that the appellant was no longer pursing his appeal in relation to sentence as he had already served the term of imprisonment. The appeal therefore proceeded on the appeal against conviction only.

		The appellant filed three grounds of appeal in relation to the conviction but at the hearing of the appeal only one was pursued, that ground being that the learned trial judge erred in failing to give the jury any direction or any sufficient direction as to how they were to deal with the evidence of alcohol consumption by the appellant and that it was incumbent on the trial judge to direct the jurors that the mere evidence of alcohol consumption was not probative of the appellant's guilt. Learned counsel Mr. Thompson argued that having regard to the evidence of three of the prosecution witnesses, i.e. the witness Ms. Boncamper, Police Officer Gilbert and Mrs. Stout. Part of the evidence led by the prosecution was that in relation to dangerous driving was that the appellant had consumed alcohol. Mr. Thompson argued that the mere fact of the alcohol consumption was not evidence of guilt and the learned trial judge ought to have directed the jury accordingly. He referred the court to the cases of <i>R v McBride</i> [1961] 3 All ER 6 and <i>R v Woodward</i> [1995] 3 All ER 79 in support of his proposition that once there is evidence of alcohol consumption that the learned trial judge is required to direct the jury that based on that evidence that by itself is not probative of the appellant's guilt. The Court looked at the evidence referred to by Mr. Thompson and was of the view that the evidence that was admitted at the trial did not simply go towards alcohol consumption but there was evidence also of impairment. In those circumstances, the Court was of the view that, there was no need for the learned trial judge to give any specific direction and that the learned trial judge was correct when she directed the jury that they were to consider all of the evidence in relation to the issue of dangerous driving. The Court considered all of that evidence and was of the view that there was a substantial amount of evidence in relation to dangerous driving led by the prosecution which included: the speed at which the appellant was driving, the time of the day, the condition of the road, the injuries suffered by the deceased, the damaged done to the vehicle, the fact that the deceased was
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		crossing and that there were two other vehicles which stopped to allow the deceased to cross the road, the fact that by the time the impact was made with the deceased the deceased was then in the middle of the road, that the appellant had overtaken a vehicle which had stopped to allow the deceased to cross. Having considered all of the circumstances, the Court was of the view that there was sufficient evidence on which any reasonable jury properly directed (while the Court did not agree that there was not a need for a direction on the alcohol evidence but even without the alcohol evidence) could have convicted the appellant of dangerous driving. For that reason, the Court was of the opinion that the appeal should be dismissed. The Court found no merit in the submission on the sole ground that was advanced for the appellant.
		HIGH COURT COMMERCIAL APPEALS
Case Name:		Livingston Properties Equities Inc. et al v JSC MCC Eurochem et al BVIHCMAP2016/0042 – BVIHCMAP2016/0046
Date:		Monday, 20th November 2017
Before:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Stephen Moverley Smith, QC instructed by Carey Olsen for 2nd - 5th Appellants and 16th - 17th Appellants

		Mr. Stephen Moverley Smith, QC instructed by Lennox Paton for the 10th-13th Appellants Mr. Stephen Moverley Smith, QC, and with him, Mr. Brian Child instructed by Campbells for the 18th Defendant
	Respondent:	Mr. Justin Fenwick QC, and with him, Mr. Jonathan Adoo instructed by Harneys for Claimants/Respondents
Issue:		
Type of Oral Result / Order Delivered (if applicable):		N/A
Result / Order:		[Oral Delivery] 1. Matter adjourned to Tuesday, 21st November 2017 at 9:00 a.m.
Case Name:		Livingston Properties Equities Inc. et al v JSC MCC Eurochem et al BVIHCMAP2016/0042 – BVIHCMAP2016/0046
Date:		Tuesday, 21st November 2017
Before:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		

	Appellant:	Mr. Stephen Moverley Smith, QC instructed by Carey Olsen for 2nd - 5th Appellants and 16th - 17th Appellants Mr. Stephen Moverley Smith, QC instructed by Lennox Paton for the 10th - 13th Appellants Mr. Stephen Moverley Smith, QC, and with him, Mr. Brian Child instructed by Campbells for the 18th Defendant
	Respondent:	Mr. Justin Fenwick QC, and with him, Mr. Jonathan Addo instructed by Harneys for Claimants/Respondents
Issue:		
Type of Oral Result / Order Delivered (if applicable):		N/A
Result / Order:		[Oral Delivery] 1. The Court will reserve its decision and when the decision is ready for delivery, notice will be sent to the parties.
Case Name:		KMG International NV v DP Holding SA [BVIHCMAP2017/0013]
Date:		Wednesday, 22 nd November 2017
Before:		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:		
	Appellant:	Mr. Alain Choo Choy, QC with Mr. Mark Forte and Ms.

		Tameka Davis
	Respondent:	Mr. Stephen Moverley Smith, QC
Issue:		High Court commercial appeal – Forum non conveniens – Appeal against judge’s finding that Switzerland was clearly or more distinctly the more appropriate forum to deal with the insolvency of the company as opposed to the BVI – Section 163 of the BVI insolvency Act – Whether it was correct for judge to view issues as a forum issue proper as opposed to a question of how the discretion under s. 163 of the Insolvency Act should be exercised – Application for permission to serve application to appoint liquidators to DP out of the jurisdiction - Spiliada principles- Counter-notice of appeal - Whether learned judge should have set aside order to appoint provisional liquidators - Non-disclosure – Improperly obtained material - Whether there is a risk of dissipation of assets
Type of Oral Result / Order Delivered:		N/A
Result / Order:		[Oral delivery] 1. Matter is adjourned to Thursday, 23rd November 2017.
Case Name:		KMG International NV v DP Holding SA [BVIHCMAP2017/0013]
Date:		Thursday, 23rd November 2017
Before:		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:		
	Appellant:	Mr. Alain Choo Choy, QC with Mr. Mark Forte and Ms. Tameka Davis
	Respondent:	Mr. Stephen Moverley Smith, QC
Issue:		High Court commercial appeal – Forum non conveniens – Appeal against judge’s finding that Switzerland was clearly or more distinctly the more appropriate forum to deal with the insolvency of the company as opposed to the BVI – Section 163 of the BVI insolvency Act – Whether it was correct for judge to view issues as a forum issue proper as opposed to a question of how the discretion under s. 163 of the Insolvency Act should be exercised – Application for permission to serve application to appoint liquidators to DP out of the jurisdiction - Spiliada principles-Counter-notice of appeal - Whether learned judge should have set aside order to appoint provisional liquidators - Non-disclosure – Improperly obtained material - Whether there is a risk of dissipation of assets
Type of Oral Result / Order Delivered:		N/A
Result / Order:		[Oral delivery] 1. Judgment is reserved.
Case Name:		JSC VTB Bank v Alexander Katunin et al BVIHCMAP2016/0047 BVIHCMAP2017/0006
Date:		Wednesday, 22 nd November 2017

Before:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Paul Webster, Justice of Appeal [Ag.] The Hon. Mr. Anthony Gonsalves, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Clive Freedman, QC, with him, Ms. Claire Goldstein and Mr. Mark Rowlands
	Respondent:	Mr. Stephen Rubin, QC, with him, Mr. Niki Olympitis and Ms. Sarah Jane Knock
Issue:		
Type of Oral Result / Order Delivered (if applicable):		N/A
Result / Order:		[Oral Delivery] 1. The Court will reserve its decision and will give notice of the date of delivery.
Reason:		N/A
		<u>HIGH COURT CIVIL APPEALS</u>
Case Name:		Friar Tuck Ltd v International Tax Authority [BVIHCVAP2017/0003]
Date:		Monday, 20 th November 2017
Before:		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:		
	Appellant:	Mr. Johnathan Addo
	Respondent:	Ms. Jo-Ann Williams-Roberts, Solicitor General, with her, Ms. Kaidia Edwards-Allister, Principal Crown Counsel, Ms. Crystalline Benjamin, Deputy Director, International Tax Authority and Ms. Shanika Lamont, representative from the International Tax Authority present
Issue:		Civil appeal – Appeal on costs – Quantum – Whether a successful applicant in a claim for constitutional relief, which is one of the class of applications for administrative orders within the meaning of Part 56 of the CPR, is entitled to have his costs assessed under CPR 56.12 or determined on the prescribed costs basis under CPR 65.5 – Statutory Interpretation of CPR 56.13(5) – Whether the learned judge erred in the exercise of her discretion in ordering that costs in a judicial review application be assessed pursuant to CPR 65.12 on the prescribed basis – Applicability of Nazim Mohammed v the Attorney General of Trinidad and Tobago Civil Appeal No. 75 of 2013
Type of Oral Result / Order Delivered:		N/A
Result / Order:		[Oral delivery] 1. Judgment is reserved.
Case Name:		Charmaine Rosan-Bunbury v [1] The Attorney General [2] The Commissioner of Police [BVIHCVAP2015/0017]
Date:		Monday, 20th November 2017

Before:		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:		
	Appellant:	Mr. Jonathon Addo holding papers for Ms. Charmaine Rosan-Bunbury
	Respondent:	No appearance
Issue:		Application for adjournment
Type of Oral Result / Order Delivered:		N/A
Result / Order:		[Oral delivery] 1. This matter is adjourned to the next sitting of the Court of Appeal for the Territory of the Virgin Islands scheduled for the week of the 26 th of February 2018
Reason:		The parties, at case management conference, indicated that matter was ready for hearing but the appellant, who appears in person, is reportedly out of the jurisdiction seeking medical attention. Counsel for the respondent sought an adjournment because counsel's law office was damaged due to the hurricane. On account of these two facts, the matter was adjourned.
		<u>MAGISTERIAL CRIMINAL APPEALS AGAINST CONVICTION</u>
Case Name:		Walter Maduro v

		The Commissioner of Police
		[BVIMCRAP2014/0009]
Date:		Tuesday, 21st November 2017
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:		
	Appellant:	Ms. Valerie R. Gordon (Appellant present)
	Respondent:	Mrs. Tiffany Scatliffe-Esprit, Principal Crown Counsel
Issues:		Criminal appeal – Breach of trust – Public officer using office for gratification
Type of Oral Result / Order Delivered (if applicable):		Directions
Result / Order:		[Oral delivery] 1. The appellant shall file a copy of the minute of conviction in the court below on or before 21st December 2017. 2. The appellant shall file with the Court Office authorities in support of the argument that it was open to the magistrate to alter his verdict at the sentencing stage of the proceedings on or before 21st December 2017. 3. Leave is granted to the respondent to file further authorities if necessary in support of the arguments advanced by the appellant on or before 21st January 2018. 4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal for the Territory of the Virgin Islands during the week commencing 26th February 2018. 5. Upon application by the appellant for variation of the conditions of bail and with no objection by the respondent, the appellant shall continue on bail in the sum of \$90,000.00 without the

		requirement to report to the Police Station three times per week between 9 a.m. and 5 p.m. and with a continued retention of his travel documents by the Police.
Case name:		Bentley Roach v The Commissioner of the Police [BVIMCRAP2012/0004]
Date:		Friday, 24th November 2017
Before:		The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Rolston Nelson, Justice of Appeal
Appearances:		
	Appellant:	Mr. Patrick Thompson
	Respondent:	Mrs. Tiffany Scatliffe-Esprit, Principal Crown Counsel
Issue:		Magisterial criminal appeal against conviction – Indecent assault – Whether conviction unreasonable and cannot be supported by the evidence – Credibility of witnesses
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral delivery] 1. The appeal stands dismissed.
Reason:		The Court noted that at the end of the submissions on each of the appellant's two grounds of appeal that were being pursued, the appellant conceded that the law and facts were against him and that he could not proceed with his appeal against either of the grounds presented. The third ground of the sentence of 12 months' imprisonment became academic once the

		appellant had served that term in full. For those reasons, therefore the appeal was dismissed.
		<u>MAGISTERIAL CIVIL APPEALS</u>
Case Name:		David “Canono” Fahie v Alphonso Enterprises Ltd. [BVIMCVAP2015/0004]
Date:		Monday, 20 th November 2017
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:		
	Appellant:	Mr. Jonathan Addo holding papers for Ms. Charmaine Rosan-Bunbury
	Respondents:	Mr. Michael Maduro
Issue:		Application for adjournment
Type of Oral Result / Order Delivered (if applicable):		N/A
Result / Order:		[Oral Delivery] 1. The hearing of this appeal is adjourned to the next sitting of the Court of Appeal for the Territory of the Virgin Islands scheduled for the week commencing 26th February 2018 at the request of the appellant and with no objection by the respondent.
Reason:		A request was made in case management conference for an adjournment of the matter as counsel for the appellant is seeking medical attention overseas. The

		respondent did not object to this request.
		<u>STATUS HEARING</u>
Case Name:		David Wells v Century Group Enterprises Limited (In Liquidation) [BVIHCVAP2015/0002]
Date:		Tuesday, 21 st November 2017
Before:		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:		
	Appellant:	Ms. Valerie Gordon
	Respondent:	Mrs. Tiffany Scatliffe-Esprit, Principal Crown Counsel
Issue:		Status of Matter
Type of Oral Result / Order Delivered (if applicable):		Directions
Result / Order & Reason:		[Oral Delivery] 1. The appellant having filed a Notice of Discontinuance of the appeal, this appeal stands dismissed.
Case Name:		[1] Thelma Fahie [2] Denzil Daniel

		[3] Wilmour Daniel v Elaine Chapdelaine [BVIHCVAP2016/0008]
Date:		Tuesday, 21st November 2017
Before:		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:		
	Appellant:	No appearance (Ms. Charmaine Rosan-Bunbury, Counsel on record)
	Respondent:	Ms. Anthea Smith
Issue:		Status of Matter
Type of Oral Result / Order Delivered (if applicable):		Directions
Result / Order:		[Oral Delivery] 1. The Registrar of the High Court is hereby directed to cause the transcript of the proceedings in the court below to be produced and the parties notified accordingly after which the appeal shall proceed in accordance with Part 62 of the Civil Procedure Rules 2000.
Reason:		Counsel for the appellant was ill and receiving medical attention overseas. Further, the transcript is not yet ready.

Case Name:		Nicholas Tranquille v The Commissioner of Police [BVIHCVAP2016/0005]
Date:		Tuesday, 21 st November 2017
Before:		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:		
	Appellant:	No appearance
	Respondent:	No appearance (Attorney General's Chambers)
Issue:		Status of matter
Type of Oral Result / Order Delivered (if applicable):		Directions
Result / Order:		[Oral Delivery] 1. The status hearing of this appeal is adjourned to the next sitting of the Court of Appeal of the Territory of the Virgin Islands during the week commencing 26 th February 2018. 2. The Registrar of the High Court shall cause the notice of the status hearing to be served on the parties to this appeal.
Reason:		Both parties were notified of the status hearing. No appearance.

Case Name:		Irvine Fletcher Scatliffe v Tortola Investment Trust Limited BVIHCVAP2016/0012
Date:		Tuesday, 21st November 2017
Before:		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:		
	Appellant:	Ms. Stacy Abel and with her, Mrs. Valerie Gordon instructed by Gordon & Co. Appellant present.
	Respondent:	Mr. Sydney Bennett, QC
Issue:		Status of the matter
		Directions
Result / Order:		[Oral Delivery] 1. The Registrar of the High Court is directed to cause the transcript of the proceedings before the master to be produced and the parties notified accordingly. 2. The appellant shall file and serve a record of appeal within one month of being notified of the availability of the transcript. 3. Leave is given to the parties to file any appropriate applications to be addressed by the court prior to the date of the next status hearing of this appeal in February 2018. 4. The status hearing of the appeal is adjourned to the next sitting of the Court of Appeal for the Territory of the Virgin Islands scheduled for the week commencing 26th February 2018.
Reason:		The transcript was not available.

Case Name:		Ciban Management Corporation v [1] CITCO (BVI) Limited [2] Tortola Corporation Company Limited [BVIHCVAP2013/0001]
Date:		Tuesday, 21st November 2017
Before:		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:		
	Appellant:	Mr. Ben Mays
	Respondent:	Ms. Marcia McFarlane
Issue:		Status of the matter
Type of Oral Result / Order Delivered (if applicable):		Directions
Result / Order:		[Oral Delivery] 1. The Registrar of the High Court is directed to cause the transcript of proceedings in the court below to be produced and the parties notified accordingly on or before the 31st December 2017. 2. The appeal shall thereafter proceed in accordance with Part 62 of the Civil Procedure Rules 2000.

Reason:		The transcript of proceedings was not ready.
Case name:		Julian Willock V National Bank of the Virgin Islands [BVIMCVAP2016/0003]
Date:		Tuesday, 21st November 2017
Before:		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:		
	Appellant:	Mr. Jamal Smith
	Respondent:	No appearance
Issue:		Status of the matter
Type of Oral Result / Order Delivered (if applicable):		Directions
Result / Order & Reason:		[Oral Delivery] 1. The appellant, Julian Willock, having filed and served a Notice of Discontinuance of this appeal on 14th November 2017, the appeal stands dismissed with no order as to costs.