

COURT OF APPEAL SITTING
TERRITORY OF THE VIRGIN ISLANDS
16th – 20th September 2013

APPLICATIONS & APPEALS

Case Name: Cukurova Holding A. S.
v
Sonera Holding B. V.
[BVIHCVAP2012/0029]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Arabella di Iorio

Respondent: No appearance

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

Result / Order: The matter is stood down.

Reason: There was no appearance of counsel for the respondent.

Case Name: [1] Kenneth M. Kryś
[2] Joanna Lau
(as joint Liquidators of Fairfield Sentry Limited, in Liquidation)

V
Stichting Shell Pensioenfonds

[BVIHCVAP2011/0036]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellants / Respondents / Applicants:	Ms. Arabella di Iorio
Respondent / Applicant / Respondent:	No appearance

Issues: Application for final leave to appeal to Her Majesty in Council – Application made by Stichting Shell Pensioenfonds filed out of time – Application for respondent to lift attachment order

Result / Order: The matter is stood down.

Reason: Counsel for Stichting Shell Pensioenfonds had not arrived as yet. The Court was notified however, that he was on his way to the courtroom.

Case Name: Nanjing Ocean (BVI) Co. Limited

V
[1] Gao Chunhe
[2] Nasbulk Limited

[BVIHCVAP2013/0005]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jonathan Ward

Respondents: No appearance (a notice was filed objecting to the application but the Court was informed that the respondents did not intend to appear at this hearing)

Issues: Learned judge chose not to apply case of *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 in refusing appellant's application for stay of execution – Whether the judge erred in distinguishing case of *Spiliada*

Result / Order & Reason: [Oral delivery]
The respondent not having appeared to oppose the application and the Court being satisfied that there are arguable grounds of appeal ordered:

1. Leave to appeal is hereby granted.
2. A stay of the proceedings in the Court below is granted and is to remain in effect until 14 days after the determination of the appeal.
3. Costs in the application for leave and stay shall be costs in the appeal.

Case Name:

Applied Enterprises Limited
Applicant

v

[1] Interisle Holdings Ltd.
Respondent

[2] Quorum Island (BVI) Limited
Second Defendant

[3] Blenheim Trust (BVI) Limited

Third Defendant

[BVIHCMAP2013/0011]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Paul Webster, QC, with him, Ms. Nadine Whyte

Respondent: Mr. William Hare for the 1st respondent
(the 2nd and 3rd respondents did not take any part in the High Court proceedings)

Issues: Application for leave to appeal – Agreement between parties – Learned trial judge dismissed applicant's application for summary judgment in court below and granted respondent's application for a stay of the proceedings – Interpretation of force majeure clause in agreement – Whether learned trial judge erred in holding that the force majeure clause in agreement could be interpreted to include inability to obtain credit – Respondent not in opposition to application for leave to appeal

Result / Order & Reason: [Oral delivery]
The Court being satisfied that there are arguable grounds of appeal, leave to appeal is hereby granted in terms of the corrected draft order.

Case Name: Cukurova Holding A. S.
v
Sonera Holding B. V.

[BVIHCVAP2012/0029]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Arabella di Iorio

Respondent: Mr. John Carrington, QC

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

Result: [Oral delivery]
Referring to the order of the Court of Appeal granting conditional leave to appeal to Her Majesty in Council on 2nd July 2013 and all conditions having been satisfied, final leave to appeal to Her Majesty in Council is hereby granted.

Reason: There was no opposition to the application.

Case Name:

[1] Kenneth M. Krys
[2] Joanna Lau
(as joint Liquidators of Fairfield Sentry
Limited, in Liquidation)
v
Stichting Shell Pensioenfonds
[BVIHCVAP2011/0036]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

**Appellants /
Respondents /
Applicants:**

Ms. Arabella di Iorio

**Respondent /
Applicant /
Respondent:**

Mr. William Hare

Issues:

Application for final leave to appeal to Her Majesty in Council – Application made by Stichting Shell Pensioenfonds filed out of time – Application for respondent to lift attachment order

**Result / Order
& Reason:**

[Oral delivery]

- 1. The Court being satisfied that the conditions to which leave were subject have been satisfied, hereby grants Final leave to appeal to Her Majesty in Council.**
- 2. In relation to the respondent's application filed and served on 11th September 2013, the following directions are given:**
 - a) The respondent shall file and serve any evidence in relation to the application within 14 days of receipt of the transcript of the proceedings of the Court of 6 May 2013.**
 - b) The Applicant shall be at liberty to file and serve any evidence in reply within 14 days of service of evidence by the respondents.**
 - c) The Applicant shall be at liberty to file and serve further written submissions within 14 days of the Applicant's evidence in reply if any, or if not, within 14 days of the respondent's evidence.**
 - d) The respondent shall file and serve written submissions in response to the application within 14 days of filing and service of further written submissions by the applicant.**
 - e) The Applicant shall be at liberty to reply to the written submissions of the respondent within 7 days.**
 - f) The Registrar is hereby directed to request that the transcript of the proceedings of the Court in relation to this appeal taken on 6th May 2013 be made available within 6 weeks of the date hereof.**
 - g) The application will thereafter be listed for**

hearing.

Case Name: [1] Staray Capital Limited
[2] Marlon Ray Chen
v
Cha, Yang (also known as Stanley)
[BVIHCMAP2013/0009]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellants: Mr. Stephen Artherton, QC, with him, Mr. Oliver Clifton
Respondent: Mr. Jeremy Child, with him, Ms. Colleen Farrington

Issues: Application for extension of time and leave to appeal –
Whether notice of appeal validly filed

Result / Order: Decision reserved until 2:00 p.m.

Case Name: [1] Staray Capital Limited
[2] Marlon Ray Chen
v
Cha, Yang (also known as Stanley)
[BVIHCMAP2013/0009]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellants: Mr. Stephen Artherton, QC, with him, Mr. Oliver Clifton

Respondent: Mr. Jeremy Child, with him, Ms. Colleen Farrington

Issues: Application for extension of time and leave to appeal –
Whether notice of appeal validly filed

Result / Order: [Oral delivery]

1. The notice of appeal filed on 4th June 2013 is validly filed, having been filed within 42 days of the judgment of 25th April 2013.
2. The Court declines to make an order granting leave to the appellant to appeal against the cost orders, which we regard as unnecessary.
3. Costs on application shall be costs in the appeal.
4. The respondent shall file and serve submissions in response to the appeal within 28 days of today's date, thereafter the appeal will proceed in accordance with the Rules.

Reason: The judgment dated 13th February 2013 did not make any appealable decision as there were no orders flowing from it. Rather, it was merely an expression of certain views held by the judge. It is a well-established principle in *Lake v Lake* [1955] 2 All ER 538, that an appeal lies from an order of the Court and not against a judge's reasoning.

Case Name:

[1] The Attorney General
[2] Chairman, Public Service Commission
[3] Director of Human Resources
v
Julian Willock

[BVIHCVAP2011/0027]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Mr. Menelik Miller

Issues: Application by respondent's legal practitioner to be removed from the record – Judicial review

Result / Order: [Oral delivery]

1. The application is granted removing the solicitor from the record and the Court makes an order in those terms.
2. The order for removal must be served by the legal practitioner on the respondent, Mr. Willock, personally and the other party, the Attorney General, and the applicant must file a Certificate of Service in accordance with rules 63.6 (4) & (5) of the Civil Procedure Rules 2000.

Case Name:

[1] The Attorney General
[2] Chairman, Public Service Commission
[3] Director of Human Resources
v
Julian Willock

[BVIHCVAP2011/0027]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Dr. Christopher Malcolm, Attorney General, with him, Ms. Maya Barry

Respondent: Mr. Julian Willock in person

Issues: Judicial review – Application for an adjournment (made by the respondent)

Result / Order: [Oral delivery]
The hearing of the appeal is adjourned to the next sitting of the Court during the week commencing 14th January 2014.

Reason: The Attorney General did not oppose the application for the adjournment in the circumstances; the respondent had only been served with the application for removal of the solicitor from the record by the legal practitioner, the same day as the hearing (16th September 2013). Mr. Willock needed to obtain new counsel to represent him in the case.

Case Name: Rudolph Clyne
v
The Queen

[BVIMCRAP2010/0011]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Tiffany Scatliffe

Issues: Appeal against conviction – Criminal trespass

Result / Order: [Oral delivery]
 1. The appeal is dismissed for want of prosecution.
 2. The Registrar of the Court to serve on the Magistrate a Certificate of Result which sets out the Court's decision in dismissing the appeal.

Reason: The appellant was served on 10th September 2013 with a notice of hearing. However, no submissions were filed by him. The Court was satisfied that the appellant had due notice of the hearing of the appeal.

Case Name: Derek Cort
 v
 The Queen
 [BVIHCRAP2010/0004]

Date: Monday, 16th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
 The Hon. Mr. Mario Michel, Justice of Appeal
 The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Patrick Thompson, with him, Ms. Sonjah Smith
Respondent: Ms. Tiffany Scatliffe

Issues: Rape – Appeal against conviction and sentence – Whether the learned trial judge erred in failing to give good character direction to jury – Whether the learned trial judge misdirected the jury on how to deal with complaint evidence of one of the witnesses – Whether the trial judge erred in directing the jury to disregard the lack of supporting evidence against the appellant

Result / Order: Decision is reserved.

Case Name: Delta Petroleum Caribbean Ltd
v
Michael Smith
[BVIHCVAP2012/0031]

Date: Monday, 16th September 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Mishka Jacobs holding papers for Mr. Terrance Neale
Respondent: Mr. Robert Nader

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

Result / Order: The matter is stood down.

Reason: Counsel who had conduct of the matter (Mr. Terrance Neale) had not arrived at the court as yet.

Case Name: Delta Petroleum Caribbean Ltd
v
Michael Smith

[BVIHCVAP2012/0031]

Date: Monday, 16th September 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Terrance Neale

Respondent: Mr. Robert Nader

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

Result / Order and Reason: [Oral delivery]
Having regard to the fact that both counsel agreed that an error was made in entering the figures for the quantum of awards in the draft order, counsel for the respondent is to produce an amended copy of the draft order for settling by the Court.

Case Name: Ciban Management Corporation
Appellant
v

[1] Citco (BVI) Limited
[2] Tortola Corporation Company Limited
Respondents

Alberto Jackson Byington Neto
Additional Respondent

[BVIHCVAP2013/0001]

Date: Monday, 16th September 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant / Respondent:	Mr. Malcolm Arthurs
Respondents / Applicants:	Mr. Jeremy Child, with him, Ms. Colleen Farrington
Additional Respondent:	Mr. Malcolm Arthurs

Issues: Application (by respondents Citco (BVI) Limited and Tortola Corporation Company Limited) for security for costs – Application for counsel to be removed from the record as acting for Ciban Management Corporation and Alberto Jackson Byington Neto

Result / Order: [Oral delivery]

Application for security for costs

IT IS ORDERED THAT:

1. The applicant do within 30 days of the date of this Order give security for the appeal costs of the application in the sum of US\$100,000 such security to be paid into court or to be given in such other form as this Honorable Court may direct.
2. Until such security is given the application is stayed.
3. In default of the Applicant giving such security in the said 30 days and the solicitors certifying such facts in writing to the Chief Registrar the Appeal be dismissed without further recourse and costs be assessed against the Applicant.
4. The Applicant to pay the costs of this Application to be assessed if not agreed within 30 days.

Application for removal of solicitor from the record

IT IS HEREBY ORDERED THAT:

1. Martin Kenney & Co Solicitors be removed from the record as acting for the respondent Ciban Management Corporation and Mr. Alberto Jackson

Byington Neto.
2. There be no order as to costs.

Case Name: **Irvin Fletcher Scatliffe**
v
Dora Scatliffe
[BVIHCVAP2012/0004]

Date: **Monday, 16th September 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Applicant: **Ms. Dancia Penn-Sallah, QC**

Issues: **Application for practitioner to be removed from the record**

Result / Order: **[Oral delivery]**
IT IS ORDERED THAT:
Dancia Penn & Co be removed from the record as counsel for the Appellant.

Case Name: **The Attorney General**
v
Maureen Peters
[BVIHCVAP2010/0038]

Date: **Monday, 16th September 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Jo-Ann Williams-Roberts, Solicitor General

Respondent: Mr. Robert Nader holding papers for Mr. William Hare

Issues:

Interpretation of Rule 7(1) of the Prison Rules, 1999 (S.I. No. 25 of 1999) – Whether the learned judge erred in finding that the Governor’s discretion not to grant full remission to the respondent was invalidly exercised and that the respondent’s continued detention at Her Majesty’s Prison was unlawful in light of the construction given to Rule 7(1) of the Prison Rules, 1999 and in the absence of any explanation as to why remission was not granted to the respondent – Application by respondent for an adjournment

Result / Order:

[Oral delivery]

- 1. The appeal is adjourned to the next sitting in January 2014.**
- 2. Leave to the respondent to file and serve written submissions with authorities on or before 17 November 2013.**
- 3. The appellant to file and serve written submissions and authorities in reply if necessary on or before Monday, 2 December 2013.**

Reasons:

The Court was of the view that the matter was of constitutional importance and the respondent should therefore have an opportunity to file submissions.

Case Name

Irvin Fletcher Scatliffe

v

Dora Scatliffe

[BVIHCVAP2012/0004]

Date:	Monday, 16th September 2013
Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
Appearances:	Appellant: Mr. Irvin Fletcher Scatliffe in person Respondent: Ms. Willa Tavernier, with her, Ms. Akilah Anderson
Issues:	Appeal against judge's order on application for ancillary relief
Result / Order:	[Oral delivery] 1. The appellant's appeal is dismissed. 2. The respondent's counter-appeal is allowed in part as set out in paragraphs 3 and 4. 3. The matrimonial home (Parcel 38, Black 2838F, Road Town Registration Section) is awarded to the respondent / cross-appellant free and clear of all encumbrances. 4. The appellant / cross-respondent Irvin Fletcher Scatliffe must pay a lump sum of \$50,000.00 to the respondent / cross-appellant Dora Scatliffe. 5. No order as to costs.

STATUS HEARING

Case Name: The Attorney General

V

**IN THE MATTER OF sections 6(2) and 7(3) of
the Drug (Prevention of Misuse) Amendment)
Act 1995 (No 1 of 1995) of the laws of the
Virgin Islands**

AND

**IN THE MATTER of the Constitution of the
Virgin Islands Order 2007**

AND

**IN THE MATTER of an application by Dale
Nibbs for redress pursuant to section 31 of
the said Constitution for contraventions of
section 16(2)(a) and 16(6) thereof in relation
to him**

[BVIHCVAP2010/0019]

Date:	Tuesday, 17th September 2013
Before:	The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Maya Barry
Respondent:	No appearance (law firm on record was Vernon E. Malone and Co.)
Issues:	Status of matter – Constitutional matter – Derogation clause, section 16(12) of the Virgin Islands Constitution Order 2007 – Drugs (Prevention of Misuse) (Amendment) Act, 1995 (Act No. 1 of 1995, Laws of the Virgin Islands)
Result / Order & Reason:	[Oral delivery] Notice of discontinuance of the appeal having been filed on 17th September 2013 and served on the respondent's legal representative on the same date, this appeal stands dismissed with liberty to the respondent to claim costs.
Case Name:	[1] Sylvia Maduro-Dale [2] Lucia Chalwell

V
The Registrar of Lands
[BVIHCVAP2010/0022]

Date: Tuesday, 17th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. Joseph S. Archibald, QC

Respondent: Ms. Jo-Ann Williams-Roberts, Solicitor General

Issues: Status of matter

**Result / Order
& Reason:** [Oral delivery]

1. The Registrar having confirmed that only the portion of the transcript relating to the judgment was prepared and the other portion of the proceedings recorded on the hard drive is damaged, the Registrar is hereby ordered to notify Counsel for the parties of the availability of a portion of the transcript.
2. Counsel for the parties to determine whether or not the appeal can proceed without the damaged portion and communicate their decision to the Chief Registrar of the Court of Appeal.
3. Further directions to be given by the Court of Appeal for the appeal to be set down for hearing.

Case Name: Black Swan Investments I.S.A.

V

[1] Harvest View Limited
[2] Sablewood Real Estate Limited
[3] Ridgepointe Overseas Developments Ltd

[BVIHCVAP2009/0027]

Date: Tuesday, 17th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Mishka Jacobs

Respondents: No appearance

Issues: Status of matter

**Result / Order
& Reason:** [Oral delivery]
Adjourned to 19th September 2013 for counsel to take instructions.

Case Name: Harvey Zabusky
v
[1] Viscaya Armadora S.A.
[2] P.M.P. Anguilla Ltd.
[3] Virgtel Limited
[BVIHCVAP2011/0070]

Date: Tuesday, 17th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Mishka Jacobs

Respondents: Ms. Nadine Whyte

Issues: Status of matter – Status of transcript – Application
appellant’s counsel for removal from record as legal
practitioners

Result / Order: [Oral delivery]
Adjourned to Thursday, 19th September 2013 at 8.30 a.m.

for Registrar's report concerning request for transcript.

Reason: The notice of availability of transcript had not been sent to the parties.

Case Name: Craig Stoddard
v
The Queen

[BVIHCRA2010/0008]

Date: Tuesday, 17th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance (counsel on record was Mr. Anthony L. Johnson from St. Kitts)
Respondent:	Ms. Tiffany Scatliffe

Issues: Status of matter – Availability of transcripts of trial proceedings

Result / Order: [Oral delivery]

1. The transcripts of the trial proceedings are to be completed no later than 3 weeks from today's date being Thursday, 15th October 2013.
2. The notice of availability of transcript is to be served on the appellant personally.
3. The appellant is to file and serve skeleton arguments in support of appeal no later than 21st November 2013.
4. The respondent is to file and serve skeleton arguments no later than 20th December 2013.
5. The appeal is set down for hearing in the week commencing 14th January 2014 at the next sitting of the Court of Appeal in the Territory of the Virgin Islands.

Reason: The transcripts were not ready.

Case Name: Camillus Parris
v
The Queen
[BVIHCRAP2011/0003]

Date: Tuesday, 17th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Patrick Thompson

Respondent: Ms. Tiffany Scatliffe, with her, Ms. Angel Flax-Solomon

Issues: Status of matter – Rape & Indecent Assault

Result / Order: [Oral delivery]
1. The record of appeal having been filed, the respondent to file and serve skeleton arguments on or before 15th October 2013.
2. The appeal to be set down for hearing for the week commencing 14th January 2014.

Reason: The record of appeal had been filed on 26th August 2013.

Case Name: Gareth McDowell
v
Commissioner of Police

[BVIMCRAP2011/0002]

Carlos Sutherland

V

The Commissioner of Police

[BVIMCRAP2011/0003]

Dexter Chance

V

The Commissioner of Police

[BVIMCRAP2011/0005]

Date: Tuesday, 17th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Patrick Thompson (acting for the appellant in BVIMCRAP2011/0002 and acting amicus curiae for the appellant in BVIMCRAP2011/0003)

Mr. Dexter Chance in person

Respondent: Ms. Tiffany Scatliffe

Issues: Status of matters – Importation of a Controlled Drug – Availability of transcript – Request by Court Manager for additional time to prepare of notes of proceedings

Result / Order & Reason: [Oral delivery]
Adjourned to the 19th September 2013 for the Court Manager of the Magistrates' Court who is responsible for preparation of transcripts in the Magistrates' Court to attend court to inform the Court on the status of the preparation of the notes of proceedings.

JUDGMENTS

Case Name: Chemtrade Limited
v
[1] Fuchs Oil Middle East Limited
[2] Fuchs Petrolub AG
[BVIHCVAP2013/0004]

Date: Wednesday, 18th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Jerry Samuel
Respondents: Mr. Mungo Lowe (for both respondents)

Issues: Civil appeal – Commercial law – Unfair prejudice – BVI Business Companies Act, 2004 as amended – Whether the learned judge correctly exercised his discretion in ordering that the company’s articles of association be amended – Business Administration Order – Whether Purchase Order was more appropriate remedy

Result and Reason: Held: dismissing both the appeal and cross-appeal and making no order as to costs, that:

1. Section 184I of the BVI Business Companies Act, 2004 gives the judge a discretion to make such order as he considers just and equitable, including, without limiting the generality, one of several orders which the section lists, the remedy of amending the articles being one of the possible orders listed.
2. The Business Administration Order that the judge

determined was the most appropriate one in the circumstances was one of the reliefs sought by the appellant in its claim, and though the appellant would have preferred him to make a Purchase Order by which Fuchs would buy out Chemtrade it was open to the trial judge to consider the matter in the round and to make the order he felt was just and equitable.

3. The trial judge had an unlimited discretion to make such order as he thought fit with a view to bringing an end to the matters complained of, and it had not been shown that the decision had been clearly or blatantly wrong or that his discretion has been exercised erroneously.

Ebrahimi v Westbourne Galleries Ltd. and Others [1973] AC 360 distinguished; Dufour and Others v Helenair Corporation and Others (1996) 52 WIR 188 applied.

4. In view of the fact that in the Ownership Case this court has, in a decision delivered immediately prior to this one, determined that the Brothers are not the owners of Chemtrade, but that they had in fact sold Chemtrade to Sheikh Abdullah, it would have been particularly unfortunate if the judge had ordered Fuchs in effect to buy out the Brothers' interest in Chemtrade. The proper order for this court to make would be to leave intact the Business Administration Order made by the court below, leaving it for Sheikh Abdullah and Fuchs to sort out between themselves the future arrangements for the management of FOMEL according to the agreements made between themselves.

Case Name:

**Sheikh Abdullah Ali Alhamrani
v
[1] Sheikh Mohammed Ali Alhamrani**

[2] Sheikh Siraj Ali Alhamrani
[3] Sheikh Khalid Ali Alhamrani
[4] Sheikh Mohammed Ali Alhamrani
(as representative of the late Sheikh Abdulaziz
Ali Alhamrani)
[5] Sheikh Ahmed Ali Alhamrani
[6] Sheikh Fahad Ali Alhamrani

[BVIHCVAP2013/0005]

Date: **Wednesday, 18th September 2013**

Coram: **The Hon. Dame Janice M. Pereira, Chief Justice**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Jack Husbands**

Respondents: **Mr. Mungo Lowe (for all 6 respondents)**

Issues: **Civil appeal – Private international law – Sharia law – Saudi Arabian conglomerate – One of the business assets held through a BVI company – All assets held in Sharia shares – Buy/Sell agreement made in Saudi Arabia relating to all jointly held assets – BVI company not included in a list of the jointly held assets valued – Dispute arising whether the shares in the BVI company were included in the sold assets – Expert evidence on Sharia law accepted by judge – Whether judge right to hold agreement was not ambiguous – Judgment of the Saudi Board of Grievances – Whether that judgment final – Whether issue res judicata**

Result and Reason: **Held: dismissing the cross-appeal of the Brothers and allowing the appeal of Sheikh Abdullah, that:**

- 1. The process of takharuj mediated by the Saudi Board of Grievances involved the Brothers valuing all the jointly held assets and offering them to Sheikh Abdullah at a price at which he could either buy or sell. On Sheikh Abdullah opting to buy and**

depositing the agreed purchase price a binding contract was entered into.

2. The preponderance of the evidence was that the contract was intended to reconcile the siblings by providing a clean break, with no assets continuing in joint ownership or partnership. That Chemtrade/FOMEL was intended by the Brothers to be included in this process of sale was evident not only from the context of the process of takharuj but also from their admissions both by their conduct, in oral statements, and in writing to that effect, and continuing for a period of a year before they began to claim the opposite.
3. Once an ambiguity in a Sharia law contract is recognised, the court must seek to ascertain the intention of the parties, admitting extrinsic evidence of actions and statements made by the parties subsequent to the contract, and accepting evidence of acknowledgments made by one party after the contract as proof of the original intention.
4. In the weighing up exercise the court was inexorably drawn to the conclusion that the testimony of the brothers that Chemtrade/FOMEL was not included in the sale was false. The court below fell into error in accepting the testimony of the expert for the Brothers, particularly his mistaken interpretation of the agreement for takharuj and his conclusion that the contract, and the judgments which upheld it, was a freestanding agreement which did not include Chemtrade/FOMEL, and was not part of a seamless process of takharuj which did include Chemtrade/FOMEL.

Eckersley and others v Binnie and others (1988) 18 Con LR 1 applied; A/S Tallinna Laevauhisus v Estonian State Steamship Line and Another (1947) 80 Ll L Rep 99 applied; Armagas Ltd v Mundogas SA (The Ocean Frost) [1985] 1 Lloyd's Rep 1 applied.

APPLICATIONS AND APPEALS

Case Name:

Charmaine Rosan-Bunbury

V

**[1] The Judicial and Legal Services
Commission**

**[2] Governor of the British Virgin Islands
William Boyd McCleary**

[3] Senior Magistrate Valerie Stephens

**[4] Permanent Secretary in the Deputy
Governor's Office David Archer**

[5] Additional Magistrate Tamia Richards

**[6] The Attorney General of the British Virgin
Islands**

[BVIHCVAP2011/0072]

Date:

Wednesday, 18th September 2013

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Charmaine Rosan-Bunbury in person

Respondent:

**Dr. Christopher Malcolm, Attorney General, with him, Ms.
Jo-Ann Williams-Roberts, Solicitor General, Ms. Maya
Barry, Ms. Isis Potter and Ms. Miglisa Cupid**

Issues:

**Judicial review proceedings – Natural justice – BVI
Constitution Order 2007 – Whether leave should have
been granted for judicial review of decision to interdict
magistrate – Whether interdiction of magistrate without
first affording an opportunity to be heard was contrary to
principles of natural justice – Public Service
Commission Regulation 37(1)(a)**

Result / Order: Oral decision to be handed down on 19th September 2013.

Case Name: East Pine Management Limited
Appellant

v

[1] Tawney Assets Limited
Respondent

[2] Oldril Holdings Limited
Second Defendant

[3] Guildron Trading Limited
Third Defendant

[BVIHCVAP2012/0035]

Date: Wednesday, 18th September 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Christopher Parker, QC
Respondents: Mr. James Ayliffe, QC, with him, Ms. Keisha Durham

Issues: Joint venture – Fraudulent misrepresentation

Result / Order: Decision reserved. The parties will be notified when the judgment is ready.

Case Name: **Vendort Traders Inc.**
V
Evrostroy Gruup LLC

[BVIHCVAP2012/0041]

Date: **Wednesday, 18th September 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Marcus Staff, with him, Mr. Adam Cloherty and Mr. Jeremy Child**

Respondent: **Ms. Tamara Cameron**

Issues: **Whether financial arbitration award was an unenforceable debt/liability for purposes of s. 10(3) of the Insolvency Act, 2003 (Act No. 5 of 2003, Laws of the Virgin Islands) – Whether debt could validly form basis of statutory demand**

Result / Order: **Judgment reserved.**

Case Name: **Delta Petroleum (Caribbean) Limited**
V
Commissioner of Customs

[BVIHCVAP2013/0008]

Date: **Wednesday, 18th September 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Terrance Neale

Respondent: Dr. Christopher Malcolm, Attorney General, with him, Ms. Jo-Ann Williams-Roberts, Solicitor General, Ms. Kaidia Edwards-Alister and Ms. Sarah Potter

Issues: Whether learned trial judge erred in holding that appellant's fuel storage tank and its contents were liable to be forfeited pursuant to s. 30(1)(a) of the Customs Management and Duties Act, 2010 (Act No. 6 of 2010, Laws of the Virgin Islands) – Whether findings made by learned judge against the weight of the evidence

Result / Order:

[Oral delivery]

1. Counsel for the parties shall consult with each other and file an amended record of appeal within seven (7) days of today's date;
2. The respondent is to file and serve skeleton arguments on or before the 16 October 2013;
3. The appellant is to file any reply if necessary on or before the 30 October 2013; and
4. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Territory of the Virgin Islands in January 2014.
5. By the consent of the parties:
 - i) The respondent/appellant may convert the petroleum as forfeited into money by way of sale;
 - ii) That the respondent/appellant shall by licence enable the appellant/respondent to use the condemned tank pending the outcome of Civil Appeal No. 8 of 2013;
 - iii) That the said tank be made available to the appellant/respondent for them to use as a holding or reserve tank for petroleum for the purpose of supplying fuel to the British Virgin Islands Electricity Corporation pending the outcome of Civil Appeal No. 8 of 2013;
 - iv) The respondent/appellant will hold the proceeds of the aforesaid sale in an interest accruing escrow account in accordance with the Public Finance Management Act 2004 and thereafter deal with the

proceeds in accordance with the judgment of the Court in Civil Appeal No. 8 of 2013.

Case Name:

[1] Alvin Hodge
[2] Tatoo's Truckin & Heavy Equipment Services Ltd
v
Michael Hasted

[BVIHCVAP2011/0025]

Date: Thursday, 19th September 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Patrick Thompson, with him, Ms. Sonjah Smith

Respondent: Ms. Tamara Cameron

Issues: Road traffic accident – Quantum of damages awarded by learned trial judge – Future medical expenses – Loss of earnings – Whether there was sufficient evidence of the respondent's earnings during the relevant period for the learned judge to make the awards that she made

Result / Order:

[Oral delivery]

1. Allowing the appeal on the item of damages for future medical expenses, the judgment of the learned trial judge ordering the appellant to pay the respondent \$5,000 is set aside.
2. Disallowing the appeal on the item of damages for loss of earnings, the award of \$90,000 ordered to be paid by the appellant to the respondent is upheld.
3. Costs of \$3,000 to be paid to the respondent as agreed by the parties.

Reasons:

Future Medical Expenses

In relation to the award of \$5,000.00 for future medical expenses, the Court had no doubt, having applied its mind to the relevant principles, that there was no basis on which the learned trial judge could have properly come to the conclusion that the respondent was entitled to the sum of \$5,000.00 for future medical expenses, particularly in circumstances where the credible and reliable medical evidence that was provided in the case pointed to the contrary. Accordingly, the Court accepted the appellant's argument that the learned trial judge improperly exercised her discretion and erred when she awarded the respondent the sum of \$5,000 for future medical expenses.

Loss of Earnings

Having reviewed the judgment of the learned trial judge, and having reviewed the evidence of the lower court, the Court was of the view that the matters complained of fell within the discretion of the learned trial judge to determine what she believed the facts of the matters were in relation to the earnings of the respondent. And, in circumstances where the learned trial judge had the advantage of observing and seeing the witnesses both during evidence in chief and during the cross-examination that sought to test the veracity of those statements, in the absence of very clear and compelling reasons, an appellate court would be very slow to set aside those findings of fact.

It was clear that there was no dispute that the respondent worked in the jobs he indicated, both as a boat charterer and as a salvage diver. The learned trial judge had before her evidence that the respondent earned between \$60,000.00 to \$80,000.00 per year chartering boats and even though it was accepted by the Court that there wasn't documentary evidence of the highest nature which could substantiate the respondent's evidence, in this Court's view, that wasn't fatal to him being able to establish that aspect of his claim. It was a matter for the learned trial judge, having heard and seen the witness and having listened to his evidence under cross-examination, to determine whether

or not she accepted as a fact that Mr. Hasted earned the sums he claimed.

Cases Applied

- *Watt (or Thomas) v Thomas* [1947] AC 484
- *Cedric Dawson v Cyrus Claxton* Territory of the Virgin Islands High Court Civil Appeal No. HCVAP2004/0023 (delivered 23rd May 2005, unreported)
- *Claudette Francis v Cecilia Martin* Territory of the Virgin Islands Civil Appeal No. HCVAP2009/0007 (delivered 20th September 2010, unreported)

Case Distinguished

- *Ashcroft v Curtin* [1971] 1 WLR 1731

Case Name:

JIPFA Investments Limited

v

[1] Natalie Brewley

[2] Alred Frett

[3] B & F Medical Complex Limited

[BVIHCVAP2012/0036]

Date:

Thursday, 19th September 2013

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Tamara Cameron

Respondents: Mr. Yohhahnseh Cave holding papers for Mr. Frank Walwyn and Ms. Astra Penn

Issues:

Injunction – Appeal against costs award – Application for adjournment (oral) made by respondents

Result / Order:

[Oral delivery]

Application for adjournment

The application for an adjournment is denied.

Substantive appeal

- 1. The appeal is allowed and the order of the master is set aside and the matter is remitted to the Court below for assessment by the master in accordance with CPR 65.11 (6) and (7) and 65.12.**
- 2. \$3000.00 awarded as costs of the appeal pursuant to CPR 65.13 (2) (b).**

Reason:

In relation to the respondents' oral application for an adjournment, the Court was of the view that Mr. Cave could offer no good reason why the matter should be adjourned. He had indicated to the Court that there was a global settlement in the making and that this should be taken into account in deciding whether the adjournment should be granted. Ms. Cameron however, who opposed the application for an adjournment, responded by indicating that the matter was filed in January 2013, and that 9 months had gone by without it being settled. She further pointed out that the matter had already been adjourned once before; it should not be left in abeyance any longer.

In relation to the substantive appeal, the Court held that the master had exercised her jurisdiction in a flawed manner. The exercise was arbitrary and unreasonable, especially having regard to the specific findings of fact made by the master, in particular, that the costs claimed were unreasonable and excessive and that the Bill of Costs is unparticularised.

Case Name:

Sylmord Trade Inc.

V
Inteco Beteiligungs AG

[BVIHCVAP2013/0003]

Date: Thursday, 19th September 2013

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Stephen Moverley-Smith, QC, instructed by Mr. Jonathan Ward

Respondent: Ms. Barbara Dohmann, QC, instructed by Mr. Brian Lacy

Issues: Trial judge's refusal to set aside judgment entered in default of acknowledgment of service – Rule 13.3 of the Civil Procedure Rules 2000 – Whether appellant gave a good explanation for failure to file acknowledgment of service – Whether appellant's defence had a realistic prospect of success

Result / Order: Judgment reserved.

Case Name: Stuart Mackellar (as Liquidator of Smart Plus International (Holdings) Limited)

V

[1] Khoo Kin Yong (aka "Alice")
[2] Pengiran Hajid Mohd Ayub
[3] The Authorised Legal Representative
Appointed in the Estate of Pengiran Anak Hajah Damit (Deceased)

[BVIHCMAP2013/0008]

Date: Thursday, 19th September 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Mark Forte, with him, Ms. Rosalind Nicholson
Respondents: No appearance

Issues: Liquidation – Mifseasance – Insolvency Act, 2003 (Act No. 5 of 2003, Laws of the Virgin Islands) – Circumstances in which ss. 254 and 256 of the Act apply – Test of liability under s. 256 of the Act

Result / Order: Judgment reserved.

Case Name: American Eagle Airlines
v
Colen Corea
[BVIHCVAP2010/0033]

Date: Thursday, 19th September 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]
The Hon. Mde. E. Ann Henry, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Akilah Anderson
Respondent: Mr. Richard Rowe

Issues: Wrongful Dismissal – Whether respondent’s actions met the standard of gross misconduct

Result / Order:

[Oral delivery]

The judgment of the magistrate is affirmed. The appeal is dismissed with costs in the amount of 2/3 of the \$1006.00 ordered in the court below.

Reason:

The learned magistrate applied the correct law in concluding that the actions of the respondent did not meet the standard of gross misconduct. The magistrate properly found that the allegation of theft was not supported by the evidence. The waiving of fares for passengers is not dishonest if the motivation for doing so is based on accepted practice and if all passengers received this benefit.

STATUS HEARING

Case Name:

Gareth McDowell

v

Commissioner of Police

[BVIMCRAP2011/0002]

Carlos Sutherland

v

The Commissioner of Police

[BVIMCRAP2011/0003]

Dexter Chance

v

The Commissioner of Police

[BVIMCRAP2011/0005]

Date: Thursday, 19th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Patrick Thompson (acting for the appellant in BVIMCRAP2011/0002 and acting amicus curiae for the appellant in BVIMCRAP2011/0003)

Mr. Dexter Chance in person

Respondent: Ms. Tiffany Scatliffe

Issues: Status of matters – Importation of a Controlled Drug – Availability of transcript – Request by Court Manager for additional time to prepare of notes of proceedings

Result /Order: [Oral delivery]
IT IS HEREBY ORDERED THAT:

1. The record of trial proceedings be transmitted to the Registrar of the High Court no later than Tuesday, 19th November 2013.
2. Notice of the availability of the record shall be served on the same date the record is received.
3. The appellant shall file and serve their skeleton arguments on or before 13th December 2013.
4. The respondent shall file and serve skeleton argument on or before 7th January 2014.
5. The appeal is set down for hearing at the next sitting of the Court of Appeal in this Territory the week commencing 14th January 2014.

Reason: A part of the notes of the trial proceedings was handwritten and the Court Manager requested time to have the notes properly typed.

Case Name: Harvey Zabusky
v
[1] Viscaya Armadora S.A.

**[2] P.M.P. Anguilla Ltd.
[3] Virgtel Limited**

[BVIHCVAP2011/0070]

Date: Thursday, 19th September 2013

Before: The Hon. Mde. Ola Mae Edwards, Justice of Appeal

Appearances:

Appellant: Ms. Mishka Jacobs

Respondents: Ms. Nadine Whyte

Issues: Status of matter – Status of transcripts of trial proceedings – Application by counsel for the appellant for removal from record as appellant’s legal practitioners

Result / Order: [Oral delivery]

1. The record of appeal is to be agreed by the parties and to be filed and served in accordance with CPR 62.12.
2. The appellants shall file and serve the skeleton arguments in accordance with Rule 62.11.
3. The respondent shall file and serve skeleton arguments in accordance with Rule 62.11.
4. The appeal is set down for hearing at the next sitting of the Court of Appeal in this Territory commencing 14th January 2014.
5. Proper service of the application having not been proven, the application by the appellant’s counsel to be removed from the record as the legal representation of the appellant is adjourned to be dealt with on paper in Chambers in St. Lucia on a date to be fixed by the Chief Registrar.

Reason: The transcript of proceedings was ready and the record could therefore be prepared.

Case Name: **Black Swan Investments I.S.A.**
v
[1] Harvest View Limited
[2] Sablewood Real Estate Limited
[3] Ridgepointe Overseas Developments Ltd
[BVIHCVAP2009/0027]

Date: **Thursday, 19th September 2013**

Before: **The Hon. Mde. Ola Mae Edwards, Justice of Appeal**

Appearances:

Appellant: **Ms. Mishka Jacobs**

Respondent: **No appearance**

Issues: **Status of matter**

Result / Order: **[Oral delivery]**
1. Notice of intention to discontinue to be filed and served by the 20th September 2013.
2. The appeal stands dismissed as from the date of filing of the notice with no order as to costs.

Reason: **The appellants did not intend to proceed with the appeal.**

JUDGMENTS

Case Name: **Charmaine Rosan-Bunbury**
v
[1] The Judicial and Legal Services Commission
[2] Governor of the British Virgin Islands William Boyd McCleary
[3] Senior Magistrate Valerie Stephens

**[4] Permanent Secretary in the Deputy
Governor's Office David Archer
[5] Additional Magistrate Tamia Richards
[6] The Attorney General of the British Virgin
Islands**

[BVIHCVAP2011/0072]

Date: Friday, 20th September 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Ola Mae Edwards, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Charmaine Rosan-Bunbury in person

Respondents: Dr. Christopher Malcolm, Attorney General, with him, Ms. Jo-Ann Williams-Roberts, Solicitor General, Ms. Maya Barry, Ms. Isis Potter and Ms. Miglisa Cupid

Issues: Judicial review proceedings – Natural justice – BVI Constitution Order 2007 – Whether leave should have been granted for judicial review of decision to interdict magistrate – Whether interdiction of magistrate without first affording an opportunity to be heard was contrary to principles of natural justice – Public Service Commission Regulation 37(1)(a)

Result and Reason: Held: dismissing the appeal and affirming the decision of the court below; and making no order as to costs, that:

1. There are many situations in which natural justice does not require that a person must be told of the complaints made against him and be given a chance to answer them at the interdiction stage. The fact that the investigation is purely preliminary, that there will be a full chance adequately to deal with the complaints later, that the making of the inquiry without giving the person a chance to be heard is justified by urgency or administrative necessity, that no penalty or serious damage to reputation is inflicted by proceeding to the next stage, or that the relevant statutory scheme properly construed

excludes such a right to know and to reply at the interdiction stage may lead a court to this conclusion. The appellant's interdiction from office with full salary was clearly a holding operation pending enquiry in a situation which was adversely affecting the Magistracy and the administration of justice in the Virgin Islands. This called for something to be done at once. Her interdiction was merely done by way of good administration and at that stage the rules of natural justice would not be applicable.

Rafael Mitchell The Republic of Trinidad and Tobago, HCA No. 3211 of 2000 (delivered 13th December, unreported) distinguished; *Evan Rees and Others v Richard Alfred Crane* [1994] 2 AC 173 applied; *Lewis & Heffer* [1978] 1 WLR 1061 applied.

2. Section 95(1) of the Virgin Islands Constitution Order 2007 gives the Governor a general power in relation to the appointment and disciplining of magistrates with incidental power to interdict.

Section 95(1) of the Virgin Islands Constitution Order 2007 applied.

3. Having regard to the affidavits that were before the learned judge, and the various grounds and declarations that the appellant was seeking in her re-amended application, this Court is of the view that the learned judge applied the correct principles in arriving at his conclusion that a claim based on those grounds would have no reasonable prospect of success.