

COURT OF APPEAL SITTING
TERRITORY OF THE VIRGIN ISLANDS
6th – 10th May 2013

JUDGMENTS

Case Name:

[1] Colin Turner
[2] Grand City Limited
v
Terrance Sansom

[ANUHCVP2010/0001]
(Antigua and Barbuda)

Date:

Monday, 6th May 2013

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant:

Ms. Akilah Anderson holding papers for Ms. E. Ann Henry, QC

Respondent:

Mr. Andrew Willins holding papers for solicitors for the respondent

Issues:

Civil Appeal – Unwritten agreement in relation to the acquisition and development of property by a company – Terms of such agreement – Whether funds provided were a loan to the company or consideration for the issue of shares in the company – Effect of breach of agreement – Whether action maintainable by person with a claim to be registered as shareholder for relief due to a company – Whether non-citizen can acquire title to shares in land-owning company

Result and Reason:

Held: allowing the appeal and ordering that the matter be remitted to the High Court with no order as

to costs, that:

1. The learned judge's conclusions arose from an incorrect reformulation of the first issue as an issue whether there was a loan by the respondent to the first appellant for the acquisition by the first appellant of his shares in the company. This was not pleaded by either of the parties and no evidence was given by either party of such an agreement.
2. The relevant legislation does not prevent a non-citizen from acquiring title to shares in a land-owning company. The title to such shares however is voidable as they are liable to forfeiture at the discretion of the Crown.

Young and Another v Bess (1995) 46 WIR 165 applied.

3. The first appellant was the one responsible for the management and operation of the bar and restaurant. The plea by the respondent that he had been excluded from the business and that the first appellant has failed and/or refused to account to him in respect of the operation of the business carries the necessary implication that the first appellant had been conducting the business of the bar and restaurant. Accordingly, the learned judge's finding that the first appellant did not "earn his equity" cannot stand.
4. A company is the proper claimant to seek relief concerning the protection of its assets except in circumstances where a shareholder may bring a derivative claim on behalf of the company for the relief. At the material time, the respondent was not a shareholder of the company. He was merely a beneficial owner of shares or a person with a right to compel the company to issue shares to him. As such he had no standing to seek such orders.

Prudential Assurance Co Ltd v. Newman Industries Ltd. and Others (No. 2) [1982] 1 AER 354

5. As the learned judge did not deal with the crucial issues of the terms of the agreement between the parties with respect to the financing of the purchase of the property by the company and whether the respondent had accepted the first appellant's breach of the agreement, both of which could only be established by oral evidence, the matter would be remitted to the High Court for re-trial on certain issues.

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:

Monday, 6th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Respondent /
Applicant:**

**Ms. Charmaine Rosan-Bunbury in person (counsel
on record is Dr. Francis Alexis, QC)**

**Respondents /
Applicants /
Respondents:**

**Dr. Christopher Malcolm, with him, Ms. Maya Barry
and Ms. Isis Potter**

Issues:

**Application to strike out notice of appeal –
Application for extension of time to file application
for leave to appeal**

Result / Order:

**The matter is stood over until Tuesday 7th May to
allow Dr. Alexis to be present.**

Reason:

**Counsel on record for the appellant was not present
at the hearing.**

Case Name:

Winston Molyneaux

v

[1] Hugh Smith

[2] Leroy Smith

[3] John Smith

[BVIHCVAP2009/0022]

Date:

Monday, 6th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Applicants:

**Mr. Andrew Willins, with him, Ms. Asha Johnson (for
Hugh Smith, Leroy Smith and John Smith)**

Respondent:

**Dr. Joseph Archibald, QC, with him, Ms. Patricia
Archibald-Bowers (for Winston Molyneaux)**

Issues:

**Application for final leave to appeal to Her Majesty in
Council**

Result / Order:

IT IS ORDERED THAT:

1. Final leave be granted to the applicants to appeal to Her Majesty in Council against the decision of the Court of Appeal delivered on 18th April 2012, allowing the Respondent's appeal against the order of the Honourable Mr. Justice E. Anthony Ross QC dated 24th September 2009.
2. The costs of this application be costs in the appeal to Her Majesty in Council.

Case Name:

**Quilvest Finance Limited et al
v
Fairfield Sentry Limited (in Liquidation)
[BVIHCVAP2011/41-52, 54-56 & 58-61]**

Date:

Monday, 6th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellants: Ms. Arabella di Iorio (for all 21 appellants)

Respondent: Mr. Robert Nader (for Fairfield Sentry Limited (in Liquidation))

Issues:

Application for final leave to appeal to Her Majesty in Council

Result / Order:

**[Oral delivery]
Order granted for final leave to appeal to Her Majesty in Council.
The costs of this application are costs in the appeal to Her Majesty in Council.**

Reason: All conditions had been complied with. There was no objection by 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, 6th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellants / Respondents:	Mr. Paul Girolami, QC
Respondent / Applicant:	Ms. Catherine Newman, QC, with her, Ms. Arabella di Iorio and Ms. Victoria Ann Lord

Issues: Application for stay of execution pending appeal to Her Majesty in Council – Applicant restrained from taking further steps in proceedings already commenced in Netherlands against respondents or from commencing new proceedings in Netherlands against respondents – Injunction

Result / Order & Reason: The Court considers that an order which adequately protects the interests of both sides should be in the following terms:

1. That Shell be granted a stay of the order of this court dated 17 September 2012, restraining Shell from taking any further steps in proceedings

commenced on 19 March 2010 in the District Court of Amsterdam, the Netherlands, against the liquidators of Sentry, or from issuing or otherwise commencing any proceedings against Sentry in the District Court of Amsterdam and elsewhere in the Netherlands, pending the determination first of Shell's application for final leave to appeal to Her Majesty in Council, and if successful of Shell's appeal to Her Majesty in Council, only insofar as Shell be permitted to take such steps as required by Dutch law, so that the action number 464074/10/2230 (the existing Dutch proceedings") remain on the long term docket;

2. Sentry be required to take such steps as required by Dutch law for the existing Dutch proceedings to remain on the long term docket pending the determination of Shell's application for final leave to appeal to Her Majesty in Council, and if successful of Shell's appeal to Her Majesty in Council;
3. Sentry be restrained from taking any steps in the existing Dutch proceedings to have them removed from the long term docket pending the determination of Shell's application for final leave to appeal to Her Majesty in Council, and if successful of Shell's appeal to Her Majesty in Council;
4. Upon the liquidator undertaking by his counsel to the court that
 - (1) Pending determination of Shell's appeal, he will not dispose of or otherwise deal with the Dublin money except by making a deposit at a bank subject to the jurisdiction of this court within clause (2) below at the best rate reasonably obtainable for a term of 18 months or such other term as the parties may agree or the court may direct;
 - (2) Any bank within the court's jurisdiction at which he deposits the Dublin money shall be a bank which is not incorporated or present in the Netherlands, nor otherwise subject to the

jurisdiction of the Courts in the Netherlands, and it shall have a Standard & Poor's Long Term Credit Rating of not lower than A;

- (3) If he moves the Dublin money from the Dublin branch of Citco Bank Netherland NV pursuant to (1) above, he will immediately inform Shell in writing of the details of where and on what terms it has been deposited.**
- (4) In the event that he moves the Dublin money pursuant to (1) above from the Dublin branch of Citco Bank Netherland NV and it is subsequently determined on Shell's Appeal that Shell should be entitled to pursue the existing Dutch proceedings with the benefit of Dutch attachments over the Dublin money, then**
 - (a) he will restore the Dublin money to the above-mentioned Dublin branch of Citco Bank Netherland NV (or to such other account or branch of Citco or other bank as the parties may agree or the Court may direct;**
 - (b) he shall consent to Shell obtaining a fresh attachment from the Dutch courts over the Dublin money in support of the existing Dutch proceedings; and**
 - (c) if and for so long as a fresh attachment is not for the time being imposed over the Dublin money, he will hold and apply the Dublin money on the same terms and to the same effect as though the Dublin money were held in the Dublin branch of Citco Bank Netherland NV subject to a Dutch attachment in support of the existing Dutch proceedings, and to treat the Dublin money as if the original attachment had been in place and remained in place.**
- 5. There shall be liberty for Shell and Sentry to apply for a variation of this order should a material change in circumstances arise.**

6. The costs of this application shall be costs in Shell's application for final leave to appeal to Her Majesty in Council if unsuccessful, or be costs in the appeal to Her Majesty in Council if leave to appeal is granted.

Case Name:

**Derek Cort
v
The Queen**

[BVIHCRA2010/0004]

Date:

Monday, 6th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Patrick Thompson

Respondent:

Mr. Valston Graham

Issues:

Rape – 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 – Application for appeal to be listed for next sitting of the Court in the Territory of the Virgin Islands

**Result / Order
& Reason:**

[Oral delivery]

The matter is adjourned to Tuesday at 9:00 a.m. to allow the appellant to be brought before the Court.

Case Name: [1] The Attorney General
[2] Chairman, Public Service Commission
[3] Director of Human Resources
v
Julian Willock
[BVIHCVAP2011/0027]

Date: Monday, 6th May 2013

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

Appearances:

Appellants: Dr. Christopher Malcolm, with him, Ms. Maya Barry and Ms. Isis Potter

Respondent: Mr. Menelik Miller holding papers for Mr. Gerard Farara, QC
Mr. Julian Willock, in person

Issues: Judicial review – Application for removal of solicitor to be made

Result / Order: [Oral delivery]
IT IS ORDERED THAT:
The hearing of the appeal be adjourned to the next sitting of Court in September in the Territory of the British Virgin Islands commencing 17th September 2013. This is the final adjournment of the matter.

Reason: An application for the removal of the respondent's solicitor (Mr. Gerard Farara, QC) from the record needed to be made but it was not possible for the Court hear this application at the day's hearing.

Case Name:

Rudolph Clyne

v

The Queen

[BVIMCRAP2010/0011]

Date:

Monday, 6th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Richard Rowe

Respondent:

Mr. Valston Graham

Issues:

Appeal against conviction – Criminal trespass

**Result / Order
& Reason:**

[Oral delivery]

Upon counsel for the appellant undertaking to take all such steps as are necessary for the due prosecution of the appeal at the next sitting of the Court in the Territory of the Virgin Islands in September 2013, the hearing of this appeal is adjourned until then.

Case Name:

Derek Cort

v

The Queen

[BVIHCRA2010/0004]

Date:

Tuesday, 7th May 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 /
Applicant:**

Mr. Patrick Thompson

Respondent:

Mr. Valston Graham

Issues:

Rape – 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 – Application for appeal to be listed for next sitting of the Court in the Territory of the Virgin Islands

Result / Order:

[Oral delivery]

- 1. The notice of discontinuance filed on 8th January 2013 is deemed a nullity and the appellant's appeal is relisted for hearing at the next sitting of the Court of Appeal in the Territory of the Virgin Islands during the week of the 16 September, 2013.**
- 2. The appellant is to file and serve an amended notice of appeal within 7 days of the date of this order on the respondents.**
- 3. The appellant is to file and serve his skeleton arguments in support of the notice of appeal on the respondent no later than 42 days from the date of making this Order.**
- 4. The Respondent is to file and serve its skeleton arguments on the appellant's legal practitioner no later than 42 days from the date that the appellant's skeleton arguments are served upon the Chambers.**

Reason:

The respondent had no objection to the application being granted.

Case Name:

Elroy O’Kieffe

v

The Queen

[BVIMCRAP2013/0004]

Date:

Tuesday, 7th May 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:

Intended Appellant / Applicant: Mr. Richard Rowe

Respondent: Mr. Valston Graham

Issues:

Application for leave to file notice of appeal out of time – Legal aid assignment

Result / Order:

[Oral delivery]

The appellant is granted leave to file his notice of appeal within 7 days of today’s date.

Reason:

The appellant, unable to afford the services of an attorney, had applied for legal aid. However, the time limit for the filing of the notice of appeal had passed by the time the legal aid was granted. The Crown did not object to the application for leave file the notice of appeal out of time.

Case Name:

Kandy James

v

The Queen

[BVIHCRA2011/0008]

Date: Wednesday, 8th May 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: Dr. Joseph S. Archibald, QC, with him, Ms. Patricia Archibald-Bowers

Respondent: Ms. Tiffany Scatliffe

Issues: Appeal against sentence – Unlawful use of means to procure the miscarriage of a woman contrary to s. 139(1)(b) of the Criminal Code, 1997 – Assault causing actual bodily harm contrary to s. 184 of the Criminal Code, 1997

Result / Order: [Oral delivery]
Appeal is allowed in relation to sentence. Sentence is varied to (3) years for the offence of procurement. Sentence of three years for the offence of Assault remains. Sentences to run concurrently.

Reason: The learned trial judge erred in imposing consecutive sentences since there were no exceptional circumstances to justify their imposition. The Court was of the view that the circumstances which the learned judge referred to as exceptional did not meet threshold for imposing the consecutive sentences.

Additionally, the learned trial judge erred in imposing a sentence of 4 years on the appellant for offence of procurement where the maximum sentence for this offence is 5 years. The learned judge should have properly applied the principles of sentencing and taken into account the mitigating factors such as the appellant being young and having no previous convictions, and the fact that she pleaded guilty.

The mitigating factors balanced the aggravating factors.

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, 8th May 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:

Applicants: **Dr. Christopher Malcolm, with him, Ms. Maya Barry,**
Ms. Isis Potter and Ms. Miglisa Cupid (acting for the
Crown)

Respondent: **Dr. Francis Alexis, QC (acting for Ms. Rosan-**
Bunbury)

Issues:

Application for notice of appeal filed in December
2011 to be struck out as a nullity having been filed
without leave of the Court – Leave required by virtue
of s. 30(4) of the Eastern Caribbean Supreme Court
(Virgin Islands) Act (Cap 80, Revised Laws of the
Virgin Islands 1991) and CPR 62.2(8)

**Result / Order
& Reason:**

[Oral delivery]

The notice of application seeking to strike out as a nullity, the notice of appeal filed on 14th December 2011 without leave of the Court, is struck out as no leave was required. Costs to the respondent agreed at \$3,000.00.

It is further ordered:

That the application of the appellant for leave to appeal is withdrawn and accordingly dismissed. The matter is adjourned to Chambers for directions at a case management hearing during the month of May 2013 by teleconference.

Reason:

The respondent to this application, Ms. Rosan-Bunbury, had sought injunctive relief in the court below. The learned judge considered and refused the injunctive relief. Section 30(4)(ii) of the Eastern Caribbean Supreme Court (Virgin Islands) Act provides that leave is not required where an injunction is granted or refused. In this instance therefore, leave to appeal the judge's decision was not required.

Case Name:

Irvin Fletcher Scatliffe

v

Dora Scatliffe

[BVIHCVAP2012/0004]

Date:

Wednesday, 8th May 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. Dancia Penn-Sallah, QC

Respondent:

Ms. Nadine Whyte, with her, Ms. Akilah Anderson

Issues: Filing of notice of acting under CPR Part 63.3

Result / Order: [Oral delivery]
The hearing of the application is adjourned to Friday at 10:00 a.m.

Reason: To allow counsel for the appellant to file a notice of acting under CPR 63.3. The respondent did not object to the adjournment being granted.

Case Name: Attorney General of the Virgin Islands
v
Daphne Alves
[BVIHCVAP2011/0065]

Date: Wednesday, 8th May 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. Vareen Vanterpool, Principal Crown Counsel, with her, Ms. Maya Barry (for the Attorney General of the Virgin Islands)

Respondent: Mr. John Carrington, QC, with him, Ms. Corine George

Issues: Appeal against decision of Charles J – Public Authorities Protection Act (Cap. 62, Revised Laws of the Virgin Islands 1991) – Whether applicable to the instant case – Whether the appellant was injured while executing a public duty

Result / Order: Decision reserved. Parties are to undertake to agree costs and file submissions therein within one (1) month.

Case Name: Nordic Investors Corp.
v
Field Investment Holdings Limited
[BVIHCVAP2012/0038]

Date: Wednesday, 8th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Ms. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal
[Ag.]

Appearances:
Applicant: Mr. Menelik Miller
Respondent: Mr. Malcolm Arthurs

Issues: Application for leave to appeal costs order – Whether the learned master exercised his discretion correctly

Result / Order: [Oral delivery]
The application for leave to appeal is refused.
Costs of the application to be borne by the applicant agreed in the sum of \$1,500.00 within 14 days.

Reason: The applicant failed to show that his appeal had a real prospect of success.

Case Name: JIPFA Investments Limited

V
[1] Natalie Brewley
[2] Alred Frett
[3] B & F Medical Complex Limited

[BVIHCVAP2012/0036]

Date: **Wednesday, 8th May 2013**

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

Appearances:

Appellant: **Ms. Dancia Penn-Sallah, QC holding papers for Ms. Astra Penn and Mr. Frank Walwyn**

Respondent: **Ms. Tamara Cameron**

Issues: **Application for adjournment**

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

- 1. The matter is adjourned to the next sitting of the Court in the Territory of the Virgin Islands.**
- 2. The respondents have until Tuesday, 4th June 2013 at 4:00 p.m. to file and serve skeleton arguments in response to the skeleton arguments of the appellant.**
- 3. The appellant shall be at liberty to reply to and file and serve skeleton arguments in reply no later than Wednesday, 19th June 2013.**

Case Name:

[1] Mr. Vitaly Arkhangelsky
[2] Julia Arkhangelskaya
[3] Oslo Marine Group Ports LLC
V
[1] Bank of St. Petersburg OJSC

[2] Alexander Savelyev
 [3] Havana Trading Limited
 [4] Moskovskiy DVOR
 [5] Sevzapalians LLC
 [6] Severo-Zapadnaya Agrarnaya Kompaniya LLC
 [7] Medinvest LLC
 [8] Graham Bell LLC
 [9] Agentstvo PO Upravleniyu Aktivami LLC
 [10] Akva-Ladoga CJSC
 [11] Gelios LLC
 [12] Khortitsa LLC
 [13] Dom Na Maloy Moyke LLC
 [14] Strategiya Korporativnykh Investitsiy I Finansov LLC
 [15] Aneks Finance CJSC
 [16] Nazia CJSC
 [17] Group Oslo Marine LLC

 [BVIHCVAP2012/0012 & 0013]
 [BVIHCMAP2013/0002]

Date: Wednesday, 8th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
 The Hon. Ms. Louise E. Blenman, Justice of Appeal
 The Hon. Mr. Paul Webster, QC, Justice of Appeal
 [Ag.]

Appearances:
Appellants: No appearance
Respondents: Ms. Victoria Ann Lord for 1st and 2nd intended respondents
 Mr. Robert Nader for the 3rd, 4th, 9th, 12th, 13th, 14th and 16th intended respondents

Issues: Application for permission for McKenzie Friend –
 Application to the full Court to discharge order of Baptiste JA of 6th July 2012 – Leave to appeal order of Bannister J of 2nd February 2012 – Application for

permission to file appeal (in relation to order of Baptiste JA) – Apparent bias of judge – Whether judge erred in failing to recuse himself

**Result / Order
& Reason:**

[Oral delivery]

IT IS HEREBY ORDERED:

On the application for the applicant to be heard by his McKenzie Friend, the Court, in the interest of justice and in the exceptional circumstances of this case permits Mr. Pavel Stroilov to be heard as McKenzie friend. This decision is not to be treated as a precedent or setting a precedent in matters of this kind.

Case Name:

[1] Andriy Malitskiy

[2] Igor Filipenko

v

Oledo Petroleum Limited

AND

Odelo Petroleum Ltd

v

[1] Andrey Grigoryevych Adamovsky

[2] Stockman Interhold S.A.

[BVIHCVA2013/0006]

Date:

Thursday, 9th May 2013

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice

The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Applicant:

Mr. Malcolm Arthurs, with him, Mr. Shane Donovan

Respondent: Mr. Peter McMaster, QC with Mr. Andrew Willins

Issues: Permission to appeal – Refusal of judge to make final provisional order – Dismissal of derivative action – Security for costs

Result / Order: [Oral delivery]
1. Permission to appeal is granted.
2. Application for security for costs and to adduce fresh evidence shall be treated as application in the appeal on the filing of the notice of appeal.
3. Costs of this application for permission shall be costs in the appeal.

Reason: The applicant met the threshold test for the grant of leave to appeal – arguable grounds had been made out.

JUDGMENTS

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

[BVIHCVAP2012/0029]
(Territory of the Virgin Islands)

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Mr. John Carrington, QC, with him, Mr. Ben Valentin

Respondent: Mr. James Nadin, with him, Ms. Arabella di Iorio

Issues: Civil appeal – Letter Agreement for concluding Share Purchase Agreement – Arbitral tribunal convened pursuant to arbitration agreement in Letter Agreement and not pursuant to Share Purchase Agreement – Whether arbitral tribunal determined issues in excess of its jurisdiction – Whether appellant was denied opportunity to present its case – Evidence of appellant’s expert witness not accepted by tribunal – Natural justice – Whether enforcement of award contrary to public policy as violating principles of natural justice, pacta sunt servanda and res judicata

Result and Reason: Held: dismissing the appeal, that:

1. The learned trial judge correctly analysed the issues relating to the application of Swiss law to the arbitration agreements. He gave adequate and proper consideration to the evidence presented, particularly that of the expert witnesses provided by the parties in relation to the correct interpretation of the arbitration clause in the Letter Agreement and the Prospective SPA. The judge rightly held that given the very special circumstances of this case, the parties never intended to be bound by two concurrent sets of different contractual obligations and that the wide ambit of the dispute clause in the Letter Agreement was broad enough in scope to allow the Tribunal to decide issues under the entirety of the parties’ arrangements.

The Ferrotitanium case (Swiss Federal Supreme Court decision of 29th February 2008 (4A_452/2007)) and the Football case (Swiss Federal Supreme Court decision of 9th June 2009 (4A_94/2009)) distinguished.

2. The statements made by the learned trial judge as to Cukurova’s odd stance in denying throughout that any Final SPA was ever concluded while at the same time complaining that Sonera should

have invoked its arbitration clause in its Request for Arbitration, were merely observations as to Cukurova's position and he did not treat this as an additional factor or consideration in construing the arbitration agreements.

3. It was clearly within the Tribunal's discretion to conclude that it was not necessary to hear Dr. Berkmenorally and that his witness statement would be accepted as his testimony, given Cukurova's failure to address the new basis on which they contended Sonera had put its case. It would not have been difficult for Cukurova to have pointed out to the Tribunal that it needed an opportunity to lead specific evidence relating to the issue of the conclusion of the agreement by silence which issue was live as from the first day of the hearing. There was no evidence that any adjournment was sought on this ground or that any objection as to procedural unfairness was taken. Cukurova was afforded the opportunity to address this issue but simply failed to make use of it. The desire of a party to present its case in a different manner in hindsight, can hardly be a ground for complaint of inability to present one's case so as to come within the exception contained in section 36(2)(c) of the Arbitration Ordinance. Accordingly it has not been shown that Cukurova was prevented from presenting its case.

Ajay Kanoria and Others v Tony Francis Guinness [2006] EWCA Civ 222 distinguished.

4. The Tribunal, on the facts of the case, did not ignore the evidence of Mr. Osborne. They merely preferred the evidence relating to the illiquidity discount given by Sonera's expert over that of Mr. Osborne, Cukurova's expert. In any event, as the trial judge rightly pointed out, this was not a matter with which an enforcing court was to be concerned. The learned judge was correct in holding that Cukurova had not discharged its burden of proving that the Tribunal had conducted the proceedings in a manner which could be said to be in breach of the principles of

natural justice as it has not been shown that the Tribunal ignored its case and in that way prevented Cukurova from presenting its case. The challenge on this basis under section 36(2)(c) of the Arbitration Ordinance also fails.

5. The challenge on the grounds of natural justice having failed, there could be no basis on the same grounds for finding that enforcement of the award was contrary to the public policy of the Virgin Islands. The trial judge was right to hold that the challenges in reliance on the principles of *pacta sunt servanda* and *res judicata* amounted to no more than complaints by Cukurova as to an error by the Tribunal in the assessment of damages which is not a concern of the enforcing court and thus affords no basis for concluding that enforcement of the award would be contrary to the public policy of the Virgin Islands.

APPLICATIONS AND APPEALS

Case Name:

**Sonera Holding B.V.
v
Cukurova Holding A.S.

[BVIHCMAP2013/0001]**

Date:

Thursday, 9th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant:	Mr. John Carrington, QC, with him, Mr. Ben Valentin
Respondent:	Mr. James Nadin, with him, Ms. Arabella di Iorio

Issues: Application to strike out application for extension of time to file appeal – Application for extension of time for permission to file appeal – Appeal against judge’s refusal to grant injunction

Result / Order: [Oral delivery]

Applications

Application to strike out extension of time for permission to appeal is refused.
The application for extension of time to appeal the Order refusing the charging order is granted.

Substantive appeal

Decision reserved.

Reason: Sonera’s delay was reasonably explained and there was no prejudice to the other side. Furthermore, the Court was satisfied that the appeal had a reasonable prospect of success.

STATUS HEARING

Case Name: [1] Freddy Lopez Peralta
[2] Edward Bueno Beltran
v
The Commissioner of Police

[BVIMCRAP2010/0009]

Date: Thursday, 9th May 2013

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

Appearances:

Appellants: Mr. Patrick Thompson

Respondent: Ms. Tiffany Scatliffe

Issue: Status of matter

**Result / Order
& Reason:** [Oral delivery]
Notice of intention not to proceed with the appeal
having been filed the appeal stands dismissed.

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: Thursday, 9th May 2013

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

Appearances:	
	Appellant: Ms. Jo-Ann Williams-Roberts
	Respondent: Mr. Stephen Daniels
Issue:	Status of matter
Result / Order:	[Oral delivery] Upon the receipt of the notice of availability of the transcripts, the matter is to proceed in accordance with the CPR 2000.
Case Name:	HRH Prince Faisal Bin Khalid Bin Abdul Aziz Al Saud v PIA Investments Limited [BVIHCVAP2011/0037]
Date:	Thursday, 9th May 2013
Before:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
Appearances:	
	Appellant: Ms. Colleen Farrington
	Respondent: No appearance
Issue:	Status of matter
Result / Order:	[Oral delivery] The matter is adjourned to the next sitting of the Court of Appeal in the Territory of the Virgin Islands during the month of September 2013 for Status Hearing.

Reason: There was no appearance for the respondent.

Case Name: Dwayne Davis
v
Tonia Davis

[BVIHCVAP2011/0067]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Mr. Patrick Thompson

Respondents: Ms. Susan Demers

Issue: Status of matter

**Result / Order
& Reason:** [Oral delivery]
Notice of discontinuance having been filed on 2nd
May 2013 the appeal stands dismissed.

Case Name: O'Carol Williams
v
Gene Maduro

[BVIMCRAP2008/0004]

Date: Thursday, 9th May 2013

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

Appearances:

Appellant: No appearance

Respondent: No appearance

Issue: Status of matter

**Result / Order
& Reason:** [Oral delivery]
Notice of discontinuance having been filed on 7th
May 2013, the appeal stands dismissed.

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

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Mr. Patrick Thompson

Respondents: Ms. Nadine Whyte

Issue: Status of matter

Result / Order: [Oral delivery]
1. Upon the receipt of availability of transcripts the
matter is to proceed in accordance with the Civil
Procedure Rules.
2. Parties are to liaise with the Court Office and the
Court Reporting Unit.

Case Name:

Camillus Parris

v

The Queen

[BVIHCRA2011/0003]

Date:

Thursday, 9th May 2013

Before:

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

Appearances:

Appellant:

Ms. Tiffany Scatliffe

Respondent:

Mr. Patrick Thompson, with him, Ms. Rutheia Maximea

Issue:

Status of matter

Result / Order:

[Oral delivery]

The appeal is to be heard at the next sitting of the Court of Appeal sitting in the Territory of the Virgin Islands in the month of September 2013.

Reason:

The transcript was not ready.

Case Name:

John Bally

v

The Queen

[BVIHCRA2011/0007]

Date:

Thursday, 9th May 2013

Before:

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

Appearances:					
	<table border="0"> <tr> <td>Appellant:</td> <td>Ms. Tiffany Scatliffe</td> </tr> <tr> <td>Respondent:</td> <td>Mr. Patrick Thompson</td> </tr> </table>	Appellant:	Ms. Tiffany Scatliffe	Respondent:	Mr. Patrick Thompson
Appellant:	Ms. Tiffany Scatliffe				
Respondent:	Mr. Patrick Thompson				
Issue:	Status of matter				
Result / Order:	[Oral delivery] The appeal is removed from the Status Hearing list.				
Reason:	The appeal was ready to proceed. The record of appeal was prepared.				
Case Name:	Annmarie Johnson v Gregory Williams [BVIMCVAP2009/0004]				
Date:	Thursday, 9th May 2013				
Before:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal				
Appearances:					
	<table border="0"> <tr> <td>Appellant:</td> <td>Mr. Richard Rowe</td> </tr> <tr> <td>Respondent:</td> <td>No appearance</td> </tr> </table>	Appellant:	Mr. Richard Rowe	Respondent:	No appearance
Appellant:	Mr. Richard Rowe				
Respondent:	No appearance				
Issues:	Status of matter				
Result / Order & Reason:	[Oral delivery] Notice that the appellant will not be proceeding with the appeal having been filed the appeal stands dismissed.				

Case Name: Donald Rogers
v
The Queen
[BVIHCRAP2010/0007]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Mr. Richard Rowe
Respondent: Ms. Tiffany Scatliffe

Issues: Status of matter

**Result / Order
& Reason:** [Oral delivery]
Notice that the appellant will not be proceeding with the appeal having been filed the appeal stands dismissed.

Case Name: [1] Sylvia Maduro-Dale
[2] Lucia Chalwell
v
The Registrar of Lands
[BVIHCVAP2010/0022]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Dr. Joseph S. Archibald, QC, with him, Ms. Patricia Archibald-Bowers

Respondent: Ms. Jo-Ann Williams-Roberts

Issues: Status of matter

Result /Order: [Oral delivery]
It is ordered:
That the transcript in the proceedings be prepared and a notice of availability be sent by the Registrar of the High Court to the parties on or about 1st July 2013 or so soon as it is practicable thereafter.

Reason: The transcript of proceedings had not been prepared as yet.

Case Name: Percival Williams
v
Elihu Rhymer

[BVIHCVAP2009/0017]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Dr. Joseph S. Archibald, QC, with him, Ms. Patricia Archibald-Bowers

Respondent: Mr. Richard Rowe

Issues: Status of matter

Result / Order: [Oral delivery]
The order of the court dated 15th January 2013 having not been complied with, the appeal stands dismissed.

Reason: On 15th January 2013, the Court of Appeal made an order that the appellant should file and serve the record of appeal in this matter no later than 4th February 2013 and skeleton arguments no later than 5th February 2013, and that in the event that the appellant failed to file and serve the record of appeal in accordance with the order the appeal would stand dismissed.

Case Name: Craig Stoddard
v
The Queen
[BVIHCRAP2010/0008]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Ms. Tiffany Scatliffe
Respondent: No appearance

Issues: Status of matter – Aggravated burglary – Robbery –
Wounding with intent – Wounding with intent

Result / Order: [Oral delivery]
The applicant is to collect the record of appeal on or before 17th May 2013 and applicant is to file submissions on or before 28th June 2013. The respondent is to respond by 30th June 2013.

The appeal is adjourned to be heard during the next sitting in September 2013.

Reason: The record of appeal was still incomplete but would have been ready by 17th May 2013.

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, 9th May 2013**

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

Appearances:

Appellant: **Mr. Patrick Thompson**

Respondent: **No appearance**

Issues: **Status of matter**

Result / Order: **[Oral delivery]**
Matter adjourned to the next sitting of the Court of Appeal in the Territory of the Virgin Islands in the month of September 2013 for status hearing.

Reason: **There was no appearance of or on behalf of the respondent.**

Case Name: **Shivaughn Hodge**
v
The Queen
[BVIHCRAP2010/0002]

Date: Thursday, 9th May 2013

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

Appearances:

Appellant: Dr. Joseph S. Archibald, QC, with him, Ms. Patricia Archibald-Bowers

Respondent: Ms. Tiffany Scatliffe

Issues: Status of matter – Attempted robbery – Assault occasioning actual bodily harm

Result / Order: [Oral delivery]
No notice of intention to proceed having been filed, the appeal stands dismissed.

Case Name:

[1] Lucien Callwood
[2] Urman Callwood
[3] Gertrude Callwood-Coakley
[4] Wendell Callwood
v
[1] Registrar of Lands
[2] Sheila Callwood Shulterbrandt
[3] Beatrice Innis Orr
[4] Estate of Sheradina Callwood alias
Geraldine Callwood (deceased)
[5] Estate of Doris Kelly (deceased)
[6] Estate of Keturah Callwood (deceased)
[7] Estate of Theophilous Callwood
(deceased)

[BVIHCVAP2012/0008]

Date: Thursday, 9th May 2013

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

Appearances:
Appellants: Dr. Joseph S. Archibald, QC, with him, Ms. Patricia Archibald-Bowers

Respondents: Ms. Jo-Ann Williams-Roberts

Issues: Status of matter

Result / Order: [Oral delivery]
Upon notice of availability of the transcripts being sent to the parties, the matter is to proceed with the rules of the Court.

Case Name: The Attorney General of the Virgin Islands
v
Daphne Alves

[BVIHCVAP2008/0027]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Ms. Jo-Ann Williams-Roberts

Respondent: Mr. Patrick Thompson

Issues: Status of matter

Result / Order & Reason: [Oral delivery]
The appeal is struck off the list as there is no live issue in this appeal.

Case Name: Dale Nibbs
v
The Commissioner of Police
[BVIMCRAP2011/0004]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Mr. Stephen Daniels
Respondent: Ms. Tiffany Scatliffe

Issues: Status of matter

**Result / Order
& Reason:** [Oral delivery]
A notice of discontinuance having been filed on 22nd March 2013, the matter is dismissed.

Case Name: Gareth McDowell
v
Commissioner of Police
[BVIMCRAP2011/0002]

Date: Thursday, 9th May 2013

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

Appearances:
Appellant: Mr. Patrick Thompson
Respondent: Ms. Tiffany Scatliffe

Issues: Status of matter

Result / Order:

[Oral delivery]

1. The record of appeal is to be lodged in the High Court on or before 2nd July 2013. The appellants to file the skeleton arguments on 31st July 2013.
2. The respondent is to respond by 30th August 2013.
3. The appeal is to be heard during the next sitting of the Court of Appeal in the Territory of the Virgin Islands in the month of the September 2013.

Case Name:

**Carlos Sutherland
v
The Commissioner of Police**

[BVIMCRAP2011/0003]

Date:

Thursday, 9th May 2013

Before:

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

Appearances:

Appellant: In person

Respondent: Ms. Tiffany Scatliffe

Issues:

Status of matter – Appeal against conviction and sentence – Appellant jointly charged with two others for offence of importing a controlled drug

Result / Order:

[Oral delivery]

4. The record of appeal is to be lodged in the High Court on or before 2nd July 2013. The appellants to file the skeleton arguments on 31st July 2013.
5. The respondent is to respond by 30th August 2013.
6. The appeal is to be heard during the next sitting of the Court of Appeal in the Territory of the Virgin Islands in the month of the September

2013.

Case Name:

**Andrew Bickerton
(As Liquidator of Wellgate International
Limited)
v
Trafalgar Capital Specialized Investment
Fund Fis
(By its General Partner Trafalgar Capital
SARL)**

[BVIHCVAP2010/0037]

Date:

Thursday, 9th May 2013

Before:

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

Appearances:

Appellant:

**Dr. Joseph S. Archibald, QC, with him, Ms. Patricia
Archibald-Bowers**

Respondent:

Ms. Tamara Cameron

Issues:

Status of matter

**Result / Order
& Reason:**

[Oral delivery]

- 1. The appeal stands dismissed by Consent.**
- 2. No order as to costs on the discontinuance.**

Case Name:

**Alvin Hodge
Tatoo's Truckin & Heavy Equipment Services
Ltd
v
Michael Hasted**

[BVIHCVAP2011/0025]

Date: Thursday, 9th May 2013

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

Appearances:

Appellant:	Mr. Patrick Thompson
Respondent:	Ms. Tamara Cameron

Issues: Status of matter

**Result / Order
& Reason:** [Oral delivery]
Unless the appellant complies with the relevant parts of the Civil Procedure Rules within 30 days the appeal will stand dismissed.

Case Name:

Dexter Chance
v
The Commissioner of Police

[BVIMCRAP2011/0005]

Date: Thursday, 9th May 2013

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

Appearances:

Appellant:	Mr. Stephen Daniels
Respondent:	Ms. Tiffany Scatliffe

Issues: Status of matter

Result / Order: [Oral delivery]
7. The record of appeal is to be lodged in the High

- Court on or before 2nd July 2013. The appellants to file the skeleton arguments on 31st July 2013.
8. The respondent is to respond by 30th August 2013.
 9. The appeal is to be heard during the next sitting of the Court of Appeal in the Territory of the Virgin Islands in the month of the September 2013.

APPLICATIONS AND APPEALS

Case Name: Sylmord Trade Inc.
v
Inteco Beteiligungs AG
[BVIHCVAP2013/0003]

Date: Friday, 10th May 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: Mr. Andrew Willins
 Respondent: Mr. Brian Lacy

Issues: Application for leave to appeal order of judge refusing to set aside judgment entered in default of acknowledgment of service – Application for stay of execution

Result / Order: [Oral delivery]
IT IS ORDERED THAT:
1. The time periods prescribed by CPR Part 62 and its associated Practice Directions be abridged.
2. Leave be granted to the Applicant to appeal

against the order of Mr. Justice Bannister, QC in the High Court of Justice, Commercial Division sitting in the British Virgin Islands made on 9th May, 2013, in proceedings between Inteco Beteiligungs AG as Claimant and Sylmord Trade Inc as Defendant, by which he refused to set aside a judgment entered in default of an acknowledgement of service on 28th January 2013 and ordered the Defendant to pay the costs of that application.

3. Until after 14 days after the delivery of judgment on the appeal:
 - a) the judgment dated 28th January 2013 and any steps taken to enforce the judgment, to include any attempt to enforce the judgment by an application for the appointment of liquidators, be stayed.
 - b) the Respondents be restrained from continuing with their application for the appointment of liquidators over the Applicant.
4. The Respondent pay the costs of this application summarily assessed in the sum of USD \$1,500.00.

Reason:

The Court was thought it best that the applicant be given an opportunity to be heard; it was satisfied that the appeal had a realistic prospect of success. In relation to the application for a stay, the Court was of the view that the respondent would suffer no prejudice if the stay was granted, but on the other hand, considerable harm would be done to the applicant if it was not.

Case Name:

Irvine Fletcher Scatliffe

V

Dora Scatliffe

[BVIHCVAP2012/0004]

Date:

Friday, 10th May 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. Dancia Penn-Sallah, QC, with her, Ms. Astra Penn

Respondent: Ms. Akilah Anderson, with her, Ms. Nadine Whyte

Issues: Matrimonial proceedings – Division of matrimonial assets

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court in the Territory of the Virgin Islands.

Case Name:

[1] Mr. Vitaly Arkhangelsky
[2] Julia Arkhangelskaya
[3] Oslo Marine Group Ports LLC
v
[1] Bank of St. Petersburg OJSC
[2] Alexander Savelyev
[3] Havana Trading Limited
[4] Moskovskiy DVOR
[5] Sevzapalians LLC
[6] Severo-Zapadnaya Agrarnaya Kompaniya LLC
[7] Medinvest LLC
[8] Graham Bell LLC
[9] Agentstvo PO Upravleniyu Aktivami LLC
[10] Akva-Ladoga CJSC
[11] Gelios LLC
[12] Khortitsa LLC
[13] Dom Na Maloy Moyke LLC
[14] Strategiya Korporativnykh Investitsiy I Finansov LLC
[15] Aneks Finance CJSC
[16] Nazia CJSC

[17] Group Oslo Marine LLC

**[BVIHCVAP2012/0012 & 0013]
[BVIHCMAP2013/0002]**

Date: Friday, 10th May 2013

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

Appearances:

Applicants: Mr. Pavel Stroilov McKenzie Friend, with him, Ms. Maitra Nadejda Bidault

Respondents: Ms. Victoria Ann Lord for the 1st and 2nd intended respondents
Mr. Robert Nader for the 3rd, 4th, 9th, 12th, 13th, 14th, and 16th

Issues: Application to full court to discharge order of single judge for extension of time to file appeal –
Application for extension of time to appeal –
Application to full court to discharge order of 6th July 2012 of single judge – Leave to appeal item 2 of the order of Bannister J made on 06th March 2013

Result / Order: [Oral delivery]

1. The application in Civil Appeal No. 12 of 2012 is dismissed.
2. The application in Civil Appeal No. 13 of 2012 for leave to appeal is dismissed.
3. The application in Commercial Appeal No. 2 of 2013 for leave to appeal is dismissed.
4. The application to adduce fresh evidence is dismissed.
5. Costs to the respondents who appeared, if not agreed within 21 days, to be assessed.
6. No order as to costs on McKenzie friend application.
7. A full written judgment will be produced if parties desire to take matters forward.

Reason: The Court was of the view that the applicants did not have a reasonable prospect of success on appeal; the allegation of bias was not supported. The judge's decision not to recuse himself was proper.

The application for extension of time to appeal was dismissed and the order of Baptiste J was confirmed as no proper explanation was given for the long delay in making the application.

In relation to the application against the costs order, the Court held that it had no reasonable prospect of success.

Case Name: Delta Petroleum Caribbean Ltd
v
Michael Smith

[BVIHCVAP2012/0031]

Date: Friday, 10th May 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: Personal injury – Assessment of damages

Result / Order: Draft order produced but awaiting settling of this order by the Court.

Case Name:

**Pengor Limited
v
Lester Anderson**

[BVIHCVAP2012/0024]

Date:

Friday, 10th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]
The Hon. Mr. Paul Webster, QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Terrance Neale with him Ms. Sonjah Smith

Respondent: Mr. Richard Rowe

Issues:

**Negligence – Breach of contract of employment –
Duty of care owed to employee by employer –
Employee injured at workplace – Whether the
learned judge's findings were against the weight of
the evidence – Damages awarded to respondent**

Result / Order:

[Oral delivery]

- 1. Finding of liability is upheld.**
- 2. Award of \$15,000 general damages for pain and suffering and loss of amenity.**
- 3. Court does not consider that a reduction of damages would be warranted.**

Reason:

There was ample evidence for learned trial judge to hold that appellant did not provide a safe place of work in the peculiar circumstances of this case.