

## BRITISH VIRGIN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

### ***Dalemont Limited -v- Alexander Gennadievich Senatorov and Riggels Enterprises Limited Claim No. BVIHC (Com) 149 of 2011***

### RECEIVERS BY WAY OF EQUITABLE EXECUTION- WHETHER PROPOSED TO APPOINT OVER PROPERTY OR OVER MERE POWER - WHETHER JUST AND CONVENIENT TO APPOINT - CPR 51.3 CONSIDERED

Dalemont Limited (Dalemont) a judgment creditor in the amount of approximately US\$40 million, by application sought the appointment of receivers over the shares in three BVI companies beneficially belonging to Alexander Gennadievich Senatorov (Mr Senatorov), the judgment debtor. The beneficial interest was not disputed. Counsel for Mr Senatorov sought to argue that the court did not have the jurisdiction to make the order sought because Dalemont was seeking an appointment over a power and not an asset and therefore did not come with the parameters identified in the case of *Tasarruf Mevduati Sigorta Fonu -v- Merrill Lynch Bank and Trust Co (Cayman Ltd and others)* [2012] 1 WLR 1721 [2011] UKPC 17. The Court preferring the submissions of Counsel for Dalemont found that the subject over which the appointment was sought was the beneficial interests in the shares of the BVI Companies and were plainly assets. The Court then found that the Receivers would be entitled to make what use they could of the rights appurtenant or ancillary to or consequential upon having the beneficial interest in that property.

The Court also considered whether the existence of uncertainties was itself a sufficient ground to refuse the relief sought. It was held that the existence of uncertainties would not mean that the receivership itself would be in any way precarious or that the property over which the appointments had been made was not property of Mr Senatorov. He said that while the receivership might not achieve its aims, the position is not so fragile that a receivership would be pointless. The Application was made under Rule 51 of the *Eastern Caribbean Supreme Court Civil Procedure Rules* which also

required the Court to have to have regard to the amount likely to be obtained by the Receivers, the amount of the judgment debt, and the probable costs of appointing and remunerating the Receivers. In his Judgment, these requirements were not to be taken literally and did not require that the Court work out in cents and dollars what will be the likely recovery or the expenses of the receivership. The Court was of the view that these requirements were merely intended to direct the attention of the Court to the need to be satisfied that the proposed appointment will be proportionate in all the circumstances.

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