

## BRITISH VIRGIN ISLANDS COURT OF APPEAL

***George Allert (Administrator of the Estate of George Gordon Matheson, deceased) et al -v- Joshua Matheson GDAHCVAP 2014/0007***

CIVIL APPEAL - INTERLOCUTORY APPEAL AGAINST JUDGE'S CASE MANAGEMENT DISCRETION - AMENDMENT TO STATEMENT OF CASE AFTER THE FIRST DATE FIXED FOR THE CASE MANAGEMENT CONFERENCE WITHOUT LEAVE OF THE COURT - WHETHER THE LEARNED JUDGE ERRED IN THE EXERCISE OF THE CASE MANAGEMENT DISCRETION IN REFUSING TO STRIKE OUT AN AMENDED DEFENCE AND COUNTERCLAIM - RULES 20.1 AND 20.2 OF THE CIVIL PROCEDURE, 2000

This was an appeal against the decision of the Judge of first instance refusing to strike out an amendment to a defence and counterclaim, which had been made without the requisite permission. The Eastern Caribbean Court of Appeal dismissed the Appeal and identified several factors to be considered when deciding whether to exercise its discretion to amend a statement of case. These factors included the justice to the parties, the legitimate expectation that the basis of a claim will not be fundamentally changed at the last minute, the adverse effect on other litigants of lost judicial time, the stage reached in the proceedings, whether the other side can be adequately compensated in costs, and whether the amendment will serve any useful purpose. In addition, the Court should continue to be guided by the principle that amendments to a statement of case should be allowed where such amendments are necessary to ensure that the real issues which are in dispute between the parties are determined, provided that such amendments can be made without there being injustice to the other party and that the other party can be compensated in costs.

In relation to the question of the applicable sanction where there has been non-compliance with a rule or order, the Court of Appeal held that while there is a discretion to strike out a statement of case for non-compliance consideration must also

be given as to consider whether there are other appropriate remedies available which are more proportionate.

*Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.*

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.