

BRITISH VIRGIN ISLANDS

COURT OF APPEAL (COMMERCIAL DIVISION)

Commodo Holding Limited and Renaissance Ventures Limited and Joseph Katz (As Executor for the Estate of the Late Eric D. Emanuel, Deceased)
BVIHCMAP 2014/0032

CIVIL APPEAL - INTERLOCUTORY APPEAL - AMENDMENT OF PLEADINGS AMENDMENT OF STATEMENT OF CASE AFTER DATE FIXED FOR FIRST CASE MANAGEMENT CONFERENCE - ADJOURNMENT OF FIRST CASE MANAGEMENT CONFERENCE - NO DIRECTIONS GIVEN - WHETHER LEAVE REQUIRED TO AMEND PLEADINGS AFTER FIRST DATE FIXED FOR CASE MANAGEMENT CONFERENCE HAD ARRIVED (ALBEIT ADJOURNED) - WHETHER LEARNED JUDGE ERRED IN RULING THAT APPELLANT REQUIRED LEAVE TO AMEND ITS REPLY AND DEFENCE - WHETHER LEARNED JUDGE ERRED IN REFUSING AMENDMENT ON BASIS OF NOT BROADENING CLAIM - SUMMARY JUDGMENT - PART 15 OF CIVIL PROCEDURE RULES, 2000 - WHETHER LEARNED JUDGE ERRED IN FINDING THAT APPELLANT HAD NO REAL PROSPECT OF SUCCESSFULLY DEFENDING COUNTERCLAIM

This was an appeal by Commodo Holdings Limited (the “Appellant”) against a refusal by the Learned Judge below to permit the Amendment of the Claim on the basis that to do so would clutter the Claim and his decision to permit Summary Judgment on a Claim for rectification by the Second Defendant.

In so far as it concerned permission to amend the Claim, the Court of Appeal confirmed that a party would be permitted to amend the Claim once before the date for a case management conference (“CMC”). It agreed with the Court below that permission was needed once the date for a CMC had arisen and it was of no relevance that the CMC had been adjourned and no directions given.

In relation to the refusal to permit the amendment, the Court found that not wanting the “landscape to be cluttered with allegations of misrepresentation and subsequent dealings of the First Defendant” was not a proper legal basis to refuse permission to amend the Claim. The true test was whether the allegation that Commodo wished to proffer in the amendments was hopeless or highly relevant to the Claim. (*George Allert et al -v- Joshua Matheson et al* GDAHCVAP2017/0007 (delivered 24 November 2014, unreported applied)). Further, in determining whether or not leave should be granted, the Court is guided by the general principles relevant to applications to amend the Claim mainly if to do so would be in the interest of justice. (See *George Allert et al -v- Joshua Matheson et al*).

The Court also confirmed that the Summary Judgment Procedure was unsuitable for claims or issues which will require the court to embark on a mini-trial and will almost always be inappropriate where there are allegations of “reprehensible conduct” or complex facts and issues involving facts and law where the law is not simple.

(*Swain -v- Hillman and another* [2001] 1 All ER 91 applied; *Three Rivers District Council -v- Bank of England* [2001] 2 All ER 513 applied, *Hallman Holding Ltd -v- Webster and another* [2016] UKPC applied; *Citco Global Custody NV -v- Y2K Finance Inc* BVIHCVAP2008/0022 (delivered 19 October 2009, unreported) followed; *Alfa Telecom Turkey Ltd -v- Cukurova Finance International Ltd et al* BVIHCVAP2009/0001 (delivered 16 September 2009, unreported followed).

The Court also held that the Judge needed to have determined who had title to the shares before ordering the rectification of the register and that that issue could only be resolved once there had been a full ventilation of the issues. (*Nilon Ltd & Another -v- Royal Westminster Investments S.A & others* [2015] UKPC applied; *Hallman Holding Ltd -v- Webster and another* [2016] UKPC applied).

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