

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Andriy Malitskiy Igor Filioenko -v- Oledo Petroleum Limited and Oledo Petroleum Ltd -v- Andrey Grigoryevych Adamovsky and Stockman Interhold S.A Claim No. BVIHCMAP2013/0006

CIVIL APPEAL - INTERLOCUTORY APPEAL FILED WITH LEAVE - BVI COMPANY - DERIVATIVE CLAIM - UNFAIR PREJUDICE CLAIM - CROSS APPEAL AGAINST ORDER FOR COSTS FILED WITHOUT LEAVE - BVI BUSINESS COMPANIES ACT, 2004 - EASTERN CARIBBEAN SUPREME COURT (VIRGIN ISLANDS) ACT

This case concerned an appeal by the Appellants against the refusal of the Commercial Court Judge to make final, a provisional sanction earlier granted, and the dismissal of their derivative claim on the basis that having also filed an unfair prejudice claim, there were two inconsistent claims seeking different remedies when the unfair prejudice claim was capable of providing the relief they sought if they were successful in the derivative claim. The Appellants maintained that they had a right to bring both claims since, in the unfair prejudice claim, they sought personal remedies, whereas in the derivative claim, they sought corporate remedies in the derivative claim. The Respondents cross-appealed the award of costs in their favour as inadequate.

The Court of Appeal dismissed the Appeal and the Cross-appeal and held, *inter alia*, (i) applying *Re: Charnley Davies Ltd (No 2)* [1990] BCC 605 applied that the same facts may well found either a derivative claim or an unfair prejudice claim; (ii) while the availability of the unfair prejudice claim was a factor to consider and it was not a mandatory bar to a derivative claim; and (iii) that the Learned Trial Judge was obviously right to rule that the cost and expense of two claims should not persist when the problem could be eliminated without any prejudice to the appellants by limiting the issues to a single claim. (*Franbar Holdings Ltd -v- Ketan Patel et al* [2008] EWHC] 1534 applied).

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