

BRITISH VIRGIN ISLANDS COURT OF APPEAL (COMMERCIAL DIVISION)

Aquaduct Limited et al and Faelesseje et al
SVGHCVAO 2014/0017

CIVIL APPEAL - INTERLOCUTORY APPEAL - PRELIMINARY ISSUES - ENFORCEMENT PROCEEDINGS - PROVISIONAL CHARGING ORDER - OBJECTION TO GRANT OF FINAL CHARGING ORDER - PART 48 OF CIVIL PROCEDURE RULES 2000 - SUMMARY PROCEEDINGS - WHETHER THERE SHOULD BE A SEPARATE TRIAL OF PRELIMINARY ISSUES WHETHER LEARNED JUDGE ERRED IN FACT AND LAW BY RULING THAT IN GIVING DIRECTIONS FOR THE FILING OF AFFIDAVIT EVIDENCE AND DISCLOSURE OF DOCUMENTS THE PRELIMINARY OBJECTION TAKEN BY APPELLANTS WAS IMPLICITLY RULED ON - WHETHER LEARNED JUDGE CONFLATED PROCEDURE APPROPRIATE TO SUMMARY HEARING OF DISPUTE WITH PROCEDURE

This was an Appeal against Learned Judge's refusal to order a trial of the issue of ownership of shares, provisionally charged by a judgment creditor under Part 48 of the ECSC CPR Rules. The judgment debtor contended that it only owned a fraction of the shares charged, the remainder being owned by a third party and, as a result the charging order, could not be properly made final. Rather than order a trial of the issue as to title to the shares, the Court gave directions for the resolution of this issue by affidavit. In allowing the Appeal, the Court of Appeal held, *inter alia*, that the right approach to preliminary issues is that they should be questions of law and should be decided based on an agreed schedule of assumed facts. The Judge ought to have addressed the point of whether a trial was required directly rather than ruling that the directions she had given on the filing of further affidavit evidence amounted to such a dismissal. The Court also held that the fair resolution of property rights of various persons claiming ownership of shares that ought to be charged, required the filing

of pleading, that would necessary attract the obligation for disclosure under the CPR. The Court held that the filing of affidavit evidence was no substitute for that process.

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