Neutral Citation Number: [2026] CICA (Civil) 4

IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CICA CIVIL APPEAL No. 0008 of 2025
(formerly FSD 0037 of 2025 (JAJ))

BETWEEN

(1) AL JOMAIH POWER LIMITED

-AND-

(2) DENHAM INVESTMENT LTD

PLAINTIFFS/APPELLANTS

-AND-

(1) IGCF SPV 21 LIMITED

(2) KES POWER LIMITED

DEFENDANTS/RESPONDENTS

Before: The Right Hon. Sir John Goldring, President
The Hon. Sir Richard Field, Justice of Appeal
The Hon. Sir Michael Birt, Justice of Appeal

Appearances: Mr Iain Quirk, KC instructed by Ms Laura Hatfield, Mr Jonathan Stroud and Ms Vered Mazin of Bedell Cristin for the Appellants

Mr Graham Chapman, KC instructed by Mr Conal Keane, Mr Niall Dodd and Mr Alan Quigley of Dillon Eustace for the First Defendant

The Second Defendant was not represented and did not appear

Heard: On the papers

Draft circulated: 23 January 2026

Judgment delivered: 3 February 2026

JUDGMENT ON COSTS

Sir Michael Birt, JA

1. This judgment deals with matters of costs following the judgment of this court dated 5 December 2025 ("the Appeal Judgment") whereby it dismissed the appeal of the Appellants against the judgment of Asif J dated 9 June 2025 in which he dismissed the Appellants' application for an interim injunction in connection with the affairs of the Second Respondent. This judgment should be read with the Appeal Judgment and words and expressions defined in that judgment have the same meaning in the present judgment.

2. The Appellants and the First Respondent ("SPV 21") have filed written submissions and the court has considered the matter on the papers. The following issues arise for determination:

   (i) Should the costs of the appeal be awarded on the standard or indemnity basis?
   (ii) Should the fees of English junior counsel engaged by SPV 21 be recoverable?
   (iii) What sum should be ordered by way of interim payment?
   (iv) The costs of the costs submissions.
   (v) Interest.

   I shall consider each of these in turn.

(i) Standard or indemnity costs

3. The Appellants accept that SPV 21 should be awarded its costs of the appeal on the standard basis. However, SPV 21 submits that costs should be awarded on the indemnity basis.

4. Pursuant to Rule 28 of the Court of Appeal Rules, this court determines costs matters in accordance with GCR Order 62. GCR O.62, r.4(11) provides for indemnity costs in the following terms:

> ***"(11) The Court may make an inter partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently."***

5. We have been referred to a number of cases which have considered this provision including *AHAB v Saad Investments Company Limited* [2013] (2) CILR 344 at [5]-[17] per Smellie CJ; *BL v JM* [2025] CIGC (Fam) 8 at [17]-[25] per Williams J; *Koa Capital LP v China Index Holdings Limited (Unreported),* FSD 235 of 2022, 20 April 2023 at [16] per Richards J; and *Re Jian Ying Ourgame High Growth Investment Fund (Unreported)*, FSD 225 and 258 of 2021, 27 January 2023 at [6]-[14] per Parker J.

6. Although we were not specifically referred to it, I consider that the general approach was helpfully summarised by Field JA in the decision of this court in *Bobulinski v China Branding Group Limited (in official liquidation) (Unreported)*, Civil Appeal 26 of 2021, 14 June 2023, which was referred to by Williams J at [24] of *BL v JM*. At [5]-[8], Field JA said as follows:

> ***"5. As was held by this court in Asia Pacific Limited v Arc LLC [2015] (1) CILR 299, the Court of Appeal's power to order indemnity costs is restricted to cases covered by the wording of GCR O.62, r.4(11) ("O.62, r.4"). That said, it is clear from the wording of O.62, r.4 that it will only be in an exceptional case that indemnity costs will be awarded (cf Ahab v Saad Investments Co Limited [2012] 2 CILR 1), for instance where the Court is of the view that the conduct of the paying party is such as deserves a mark of disapproval (AHAB v SAAD [2013] 3 CILR 344).***

6. In agreement with the view of Smellie CJ expressed at p.353 in the latter case, I too am of the opinion that for conduct to be unreasonable or negligent within O.62, r.4 it must be more than simply wrong or misguided in hindsight.

7. I agree with the following view expressed by Henderson J in Bennett v Attorney General [2010] (1) CILR 478 at paras 6-9:

> *"Advancing a [case] which is merely weak or unlikely to succeed is to be distinguished from maintaining a [case] which is manifestly hopeless. The latter can be characterised as unreasonable. The former is a regular occurrence with which every barrister will be familiar…..*
>
> *The assessment of unreasonableness must avoid the wisdom of hindsight. The question is whether it was unreasonable to advance the claim or maintain the defence taking into account what should have been evident to the party concerned at the outset of the trial."*

8. I note that in making these observations Henderson J justifiably cited with approval the following passage from the judgment of Coulson J (as he then was) in Fitzpatrick Contractors Ltd v Tyco Fire & Integrated Solutions (UK) Ltd ([2008] EWHC 1391 (TCC), at para 3):

> *"There are a number of decisions, both of the TCC and of other courts, which make plain that the pursuit of a weak claim will not usually, on its own, justify an order for indemnity costs, whereas the pursuit of a hopeless claim (or a claim which the party pursuing it should have realised was hopeless) will lead to such an order. In both Wates Construction Ltd v HGP Greentree Allchurch Evans Ltd [2006] BLR 45 and EQ Projects Limited v Javid Alavi [2006] BLR 130 this court was persuaded that, in the circumstances of those cases, an order for indemnity costs was appropriate because the claimant should have realised that their claim was hopeless and should not have taken the matter on to trial. However, in Healy-Upright v Bradley & Another [2007] EWHC 3161 (Ch), the court reiterated that an order for indemnity costs was*

not justified by the mere fact that the paying party had been found to be wrong, either in fact or in law or both, or by the fact that in hindsight, the result of the case now being known, the position adopted by that party may be thought to have been unreasonable.""

7. In short, the starting position is that costs should be awarded on the standard basis and there has to be something exceptional to justify an award of indemnity costs. This may occur if the paying party has conducted the proceedings or the part to which the order relates improperly, unreasonably or negligently (as specified in O.62, 4(11)) to such extent as to take the case out of the norm and justify, in the court's discretion, an award of costs on the indemnity basis.

8. SPV 21 submits that indemnity costs are appropriate in respect of the appeal for the following reasons:

(i) The determining point in the appeal was the judge's decision to dismiss the Appellants' application for an interim injunction on the basis of unclean hands. This was an exercise of discretionary judgment on the part of the judge where an appellate court may only interfere on very limited grounds, such as that the judge was plainly wrong. This court held at [66] of the Appeal Judgment that the judge's decision *"cannot possibly be categorised as being plainly wrong"*. In the circumstances, the Appellants' attempt to overturn the judge's discretionary decision on this aspect was hopeless (rather than simply being weak) and should attract an award of indemnity costs. In this respect, it was relevant that in their skeleton argument the Appellants had failed to address the test which must be satisfied before an appellate court can overturn a judge's exercise of his discretion.

(ii) As the court pointed out at [103]-[107] of the Appeal Judgment, the Appellants sought at the hearing of the appeal to introduce a new argument (with supporting authorities) on whether damages would be an adequate remedy. This argument had not been run before the judge or mentioned in the Appellants' skeleton argument for the appeal. As the argument was only notified to SPV 21 the day before the hearing of the appeal, time had to be spent on addressing it and furthermore time spent on the original submissions in the skeleton

argument was wasted. SPV 21 further noted that the Appellants had been criticised for similar conduct by the Privy Council in connection with the anti-suit proceedings.

(iii) The appeal was all part of the Appellants' attempt to hold on to the injunctive relief obtained in Pakistan as long as possible despite the clear rulings in the Cayman courts that the proceedings in Pakistan were in breach of the exclusive jurisdiction clause in the KESP SHA.

(iv) SPV 21 further noted that the judge had awarded indemnity costs in relation to the hearing before him for the interim injunction.

9. In my judgment, the Appellants' conduct in relation to this appeal did not reach the level appropriate for an award of indemnity costs. Thus:

(i) Whilst the appeal was dismissed, I do not consider that it can be categorised as a manifestly hopeless appeal. In the first place, this court upheld the Appellants' submission that there was a serious issue to be tried. Secondly, although it dismissed the appeal against the judge's discretionary decision concerning clean hands, I stated at [65] of the Appeal Judgment (with the agreement of the President and Field JA) that I was not sure that I would necessarily have reached the same conclusion on this point as the judge. I do not therefore consider that the appeal on this point was hopeless so as to amount to unreasonable conduct on the part of the Appellants. In my view, this was a fairly standard case of an appellant having some tenable arguments to put forward, but the appellate court ultimately rejecting those arguments.

(ii) It is true that the Appellants did not refer in their skeleton argument to the test for an appellate court to interfere with a discretionary decision at first instance. However, the test is extremely well-established and is well-known to this court. I do not consider that the Appellants' failure to refer to it is material to our decision as to whether costs in this case should be awarded on the indemnity basis.

(iii) It is correct that the Appellants sought to raise a new argument on the adequacy of damages point. However, this court refused to allow this argument and accordingly time spent by SPV 21 in addressing the original arguments in the Appellants' skeleton argument was not wasted.

I accept that some additional time will have been spent by SPV 21 shortly before the hearing in order to address the new argument but I do not consider that is sufficient to justify indemnity costs. The time spent will be recovered on the standard basis.

(iv) This court did indeed point out that there has been nothing to prevent the Appellants from withdrawing the Pakistan Proceedings since October 2022, but this appeal was concerned with whether the Cayman courts should grant an injunction in not dissimilar terms to the Pakistan injunction. Other than as an aspect of the clean hands argument, I do not consider that any delay in withdrawing the Pakistan Proceedings amounts to unreasonable conduct in relation to this appeal. The Appellants had points which were properly arguable on whether the Cayman court should grant such an injunction and, in my view, did not behave unreasonably in seeking to appeal the judge's decision.

(v) I note that the judge awarded indemnity costs in respect of the hearing before him for the reasons explained in his costs judgment dated 1 September 2025. However, that was a discretionary decision on his part based on the manner in which the Appellants had conducted the case before him. This court is concerned with the conduct of the appeal as opposed to the hearing before the Grand Court and, for the reasons I have explained, I do not consider that the Appellants' conduct of the appeal is such as to justify an award of indemnity costs.

10. In summary, I would order that the Appellants pay SPV 21's costs of the appeal on the standard basis.

(ii) Recovery of junior counsel's fees

11. As appears from the Appeal Judgment, the present proceedings are one part of complex litigation involving the parties and/or their associated companies which has given rise to a number of different proceedings. SPV 21 has instructed junior English counsel, Mr Scott Allen, in connection with some of those proceedings and instructed him in connection with the present proceedings both before the Grand Court and in respect of the appeal. They seek to recover his fees in the sum of US$26,985.60 on taxation of the costs of the appeal.

12. GCR O.62, r.18(1) provides:

> ***"Work done by foreign lawyers may be recovered on taxation under these rules on the standard basis provided that –***
>
> ***(a) the foreign lawyer has been temporarily admitted as an attorney; and***
> ***(b) the work was done after the foreign lawyer was admitted." (***the "sub-rule***")***

13. On the face of it, the wording of the sub-rule might be thought to suggest that, if a foreign lawyer is not temporarily admitted, fees for his work are not recoverable on a taxation on the standard basis. However, SPV 21 submits that such work can be recovered on a standard basis taxation even if the foreign lawyer has not been temporarily admitted provided that the court dispenses with this limitation in the sub-rule.

14. The Appellants accept at [24] and [42] of their skeleton argument that this is the position. Accordingly, it is common ground between the parties that, even where costs are awarded on the standard basis (as is the position following our decision above), the costs of a foreign lawyer may be recovered on taxation despite the fact that the foreign lawyer has not been temporarily admitted, provided that the court dispenses with this requirement.

15. As it is common ground and given the need for a proportionate approach, I proceed on that basis. However, by reference to the authorities to which we have been referred, there does not seem to be any decision of this court on the point and it is not clear to me that the position agreed by counsel in this case is necessarily correct.

16. SPV 21 relied on three cases in its skeleton argument in support of its contention that the court could dispense with the apparent requirement for temporary admission contained in the sub-rule. They were, in chronological order, *Ritchie Capital Management LLC v Lancelot Investors Fund Limited* (Unreported, 4 March 2021); *Re Grand State Investments Limited* (Unreported, 17 March 2023); and *Re Principal Investing Fund 1 Limited* (Unreported, 27 July 2023).

17. In *Ritchie Capital*, a case decided on the papers, Parker J awarded costs on the standard basis. He then held at [34] that he would grant a dispensation from the sub-rule and allow foreign lawyers' costs even though they had not been temporarily admitted. He appears to have based his jurisdiction to grant this dispensation on [24] of the judgment of Kawaley J in *Re General Shipping E Outlook Do Brasil SA* [2020] (2) CILR 821. But in that case, Kawaley J had awarded indemnity costs and, as appears from the wording itself and is well-established judicially, the sub-rule is not applicable where costs are awarded on the indemnity basis. He did not therefore consider whether the requirement in the sub-rule could be dispensed with. Accordingly, the basis for Parker J's decision in *Ritchie Capital* that a dispensation could be granted where costs are awarded on the standard basis is not entirely clear to me.

18. In *Grand State Investments*, Parker J awarded costs on the standard basis. He then went on to consider whether work done by foreign lawyers who had not been temporarily admitted could nevertheless be recovered on taxation. He stated at [42]:

> ***"42. GCR O.62, r.18(1) provides that work done by foreign lawyers may be recovered on taxation on the standard basis provided that the foreign lawyer has been temporarily admitted in the Cayman Islands and the work was done after he or she was admitted. Where the foreign lawyer has not been admitted their fees cannot be recovered on taxation on the standard basis unless a dispensation is given."*** [emphasis added]

Parker J then went on to grant such a dispensation on the basis, inter alia, that the issues in the case raised issues of foreign law.

19. The authority given for the emphasised passage in the above quotation was *Sagicor v Crawford* [2008] CILR 482, a decision of Henderson J. Having looked at the judgment in that case, which was not included in the authorities before us, I am unable to see anything which suggests that there is an ability for the court to dispense with the requirement for temporary admission contained in the sub-rule. In *Sagicor*, costs were awarded on the indemnity basis and the issue which Henderson J decided was that the sub-rule did not apply where costs were awarded on the indemnity basis. He therefore allowed the costs of the foreign lawyers. A subsidiary point related to the terms of Practice Direction 1/2001 which said that travelling and hotel expenses paid to foreign lawyers should not be

recoverable on taxation. Henderson J held that this was simply a guideline and the court could allow such expenses where appropriate.

20. Accordingly, whilst it is clear that in *Grand State Investments* Parker J held that he had power to dispense with the requirement for temporary admission in the sub-rule, it is not clear to me that there was a firm foundation for such ruling.

21. Finally, in *Re Principal Investing Fund*, Kawaley J explained at [3(c)] of his judgment that he had made certain rulings in the course of an oral hearing including that he had approved the recovery of foreign lawyers' (including paralegals) costs pursuant to the sub-rule on the grounds that the financial and legal scale and multi-jurisdictional reach of the litigation justified the deployment of foreign legal capacity.

22. He explained in the judgment that he had reserved his decision on other matters including whether costs should be awarded on the standard or the indemnity basis. He subsequently held in the judgment that pre-trial costs should be awarded on the standard basis but that the trial costs should be on the indemnity basis. Nothing further is said in the judgment about the costs of foreign lawyers. I accept it is to be inferred that Kawaley J's approval of the recovery of foreign lawyers' costs referred to at [3(c)] extended both to the pre-trial phase (when costs were awarded on the standard basis) as well as to the trial phase (where costs were on the indemnity basis), but the point was not specifically addressed. There is no consideration in the judgment of the sub-rule or whether the court has jurisdiction to dispense with the requirement for temporary admission contained in the sub-rule.

23. In summary, whilst I accept that, certainly in two cases and possibly in a third, judges of the Grand Court have granted a dispensation from the requirement in the sub-rule and allowed recovery of the costs of foreign lawyers even where those lawyers have not been temporarily admitted, the reasoning in support of the existence of a jurisdiction to grant such dispensation, despite the apparently clear wording of the sub-rule, is somewhat sparse.

24. As against that, the papers before us contain two cases where counsel appear to have agreed that there is no such jurisdiction. Thus, in *General Shipping* (supra), where costs were awarded on the indemnity basis, Kawaley J said at [19]:

> ***"It is common ground that the basic distinction between indemnity costs and standard costs is that in the latter case, foreign lawyers' fees are only recoverable if the foreign lawyer is admitted to the local Bar (GCR O.62, r.18(1)-(2))…"***

25. In *Scully Royalty Limited v Raiffeisen Bank International AG* [2022] (1) CILR 572, a decision of this court, the respondent to the appeal sought indemnity costs in respect of certain aspects of the appeal. However, counsel for the respondent appears to have accepted that it could not recover foreign lawyers' costs if only standard costs were awarded. Thus, having ruled that costs should be awarded only on the standard basis, this court stated at [38]-[39]:

> ***"38. The respondent submits that, to the extent that it is awarded costs on the indemnity basis, it should be authorised to recover the costs of its foreign lawyers, namely London junior counsel and its London solicitors.***
>
> ***39. In the light of the court's decision not to award any costs on the indemnity basis, the point no longer arises. Pursuant to r.18(1), the costs of foreign lawyers who have not been temporarily admitted are not recoverable where costs are awarded on the standard basis and the respondents did not seek to argue otherwise."***

26. The point had clearly not been argued and accordingly the observation at [39] should not be taken as an authoritative ruling. Nevertheless, the observations in both *General Shipping* and *Scully Royalty* suggest that the issue of whether there is jurisdiction in the court to dispense with the requirement for temporary admission in the sub-rule remains uncertain. I am not expressing a view on the merits of the point one way or the other. I simply highlight that, on the basis of the authorities to which we have been referred – and there may of course be others of which we are not aware – the existence of such jurisdiction remains an open question for authoritative resolution in a future case.

27. However, as stated at para 15 above, I shall consider this case on the agreed basis that this court may dispense with the requirement for temporary admission and accordingly allow the recovery of the costs of foreign lawyers on the standard basis even where there has been no temporary admission.

28. SPV 21 submits that such dispensation should be granted and that Mr Allen's costs should be recoverable on taxation. I would summarise its submissions as follows:

(i) The three fee earners in Cayman who worked on the appeal, namely Mr Conal Keane, Mr Niall Dodd and Mr Alan Quigley, comprise the totality of the attorneys in the Dillon Eustace litigation team in the Cayman Islands and, while the firm does have a litigation team in its Dublin office, solicitors within that team are not familiar with the background to these proceedings or the wider dispute.

(ii) The present proceedings are part of a wider multi-jurisdiction dispute involving complex legal and factual issues regarding underlying commercial matters of extremely high value. Given the importance of the appeal in the context of the overall dispute and the fact that the appeal to the Privy Council in the anti-suit proceedings was to be heard on 6 October 2025, the workload was such that, as stated in the affidavit of Mr Quigley dated 12 December 2025 filed in connection with the issue of costs, it was necessary for an additional fee earner to be engaged to assist with the appeal.

(iii) Mr Allen is a junior counsel in the same chambers as Mr Chapman KC and he was familiar with the background to the proceedings as he had been engaged by SPV 21 to assist it where necessary with related proceedings. It was therefore reasonable and proportionate to engage him as an additional member of the litigation team in connection with the appeal.

(iv) Despite being a practising barrister of some twenty years standing. Mr Allen's hourly charge out rate was less than the rates charged by all three members of the Dillon Eustace litigation team and less than the maximum rate which could be charged for an attorney with less than five years post-qualification experience (being the category of attorney fee earner with the lowest charge out rate as per Practice Direction 1 of 2024). Furthermore, the primary work carried out by Mr Allen was assisting Mr Chapman with his preparation for

the appeal. The fact that the work was carried out by him rather than another member of the legal team resulted in costs being lower than would otherwise have been the case.

(v) The engagement of Mr Allen to assist with the appeal did not result in duplication of work and did not fall foul of the overriding principle stated in O.62, r.18(7) which provides:

"The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than the paying party would have been required to pay if the successful party had employed only local attorneys."

(vi) In his judgment on costs dated 1 September 2025, Asif J had held that the costs of Mr Allen should be recoverable on taxation. Whilst he had awarded costs on the indemnity basis, so the sub-rule did not apply, the judge held at [20] that he would have reached the same decision even if he had awarded costs on the standard basis. The reasons which the judge gave at [17] and [20] of his judgment were equally applicable in relation to the appeal.

29. The Appellants emphasise that it is exceptional for junior counsel to be given temporary admission. Thus, Practice Direction 4 of 2012 deals with limited (i.e. temporary) admission and states at para 7 that junior counsel will not normally be granted temporary admission except in *"unusual and special circumstances"*. As Smellie CJ pointed out in *In the Matter of Various Applications for the Grant of Limited Admission as an Attorney-at-Law of the Cayman Islands* [2015] (2) CILR 338 at [24]-[25], the reason for this approach is that the services of attorneys of equivalent experience will be readily available from amongst the local profession and there is a need to protect the local profession from undue competition.

30. The Appellants further noted that as from 1 January 2026, the Legal Services Act 2020 will come into effect, section 35(4)(c) of which provides that junior counsel will only be given temporary admission where the judge is satisfied that there are *"exceptional circumstances"* and that *"the fact that the applicant law firm does not itself have sufficient capacity to act or to advise in the specified suit or matter shall not be considered an exceptional circumstance"*.

31. SPV 21 had not applied for Mr Allen to be given temporary admission, no doubt because it realised that such application would not be successful. In the circumstances, the court should not enable SPV 21 to circumvent the high threshold for temporary admission and the clear intention of the sub-rule that there should be temporary admission before fees for foreign lawyers can be recovered on a taxation on the standard basis.

32. As to the suggested lack of resources, the Appellants made the point that the broader proceedings have been ongoing for some three years and Dillon Eustace should have employed a junior Cayman based attorney some time ago. Alternatively, the more senior attorneys, namely Mr Dodd and Mr Keane could have stepped in to assist Mr Quigley before engaging foreign counsel.

33. On balance, I am persuaded that, essentially for the reasons put forward by SPV 21 and summarised at para 28 above, this court should dispense with the requirement in the sub-rule and allow the recovery of fees for work done by Mr Allen.

34. I accept the existence of the policy considerations articulated by Smellie CJ and implicit in the sub-rule. However, it is equally important for the reputation and standing of the Cayman Islands as an international finance centre where it is suitable to conduct business, that litigation is handled promptly, effectively and professionally.

35. On the evidence in the present case, there were insufficient local legal resources within Dillon Eustace to handle the appeal suitably promptly having regard to the other proceedings in this matter, including the appeal to the Privy Council in the anti-suit proceedings which was proceeding at very much the same time as this appeal. The Appellants suggest that extra staff should have been taken on or more senior attorneys should have undertaken more work instead of Mr Allen. The latter course would have increased the costs because of their greater charge out rate and I do not consider the former suggestion to be sufficient reason to deprive SPV 21 of the ability to recover the costs of Mr Allen if it was otherwise reasonable to instruct him.

36. In the circumstances, the decision by Dillon Eustace to instruct Mr Allen, who was familiar with the general background, had been involved in the hearing before the Grand Court and whose hourly rate was less than their local attorneys would charge, was a reasonable one.

37. Subject to what is said below at para 39, it should not lead to any greater level of costs being payable by the Appellants on taxation than would have been the case if local attorneys had carried out the same work; on the contrary, given Mr Allen's lower charge out rate, the Appellants would probably have had to pay more if local attorneys had been used.

38. I acknowledge that as from 1 January 2026, any lack of resources in a local firm will not constitute an exceptional circumstance allowing junior counsel to be admitted and that this might suggest that from that date forward, such lack of local resources would not be a reason to dispense with the requirement in the sub-rule. However, that provision was not in force at the time of the appeal and accordingly is not relevant for present purposes.

39. Accordingly, I would hold Mr Allen's fees are in principle recoverable upon the taxation on the standard basis in the present case. However, I would emphasise that sub-rules (2)-(7) of O.62, r.18, which are designed to ensure that there is no duplication of costs and that the paying party does not have to pay a greater sum simply because the successful party has engaged a foreign lawyer, will be applicable on any taxation. It will be for the taxing officer to determine in due course whether any part of Mr Allen's fees or any part of the fees charged by local fee earners in Dillon Eustace should be discounted by application of sub-rules (2)-(7).

(iii) Interim payment

40. The Appellants accept that an interim payment on account of costs should be ordered. Given the statement of principle by Kawaley J in *Al Sadik v Investcorp Bank BSC* [2019] (2) CILR 585 at [25], approved by this court at [52] of *Scully Royalty* (supra), this was an inevitable and correct concession.

41. When assessing the amount of an interim payment, the court is not concerned to determine the irreducible minimum that is likely to be awarded following taxation but to make a reasonable estimate of what is likely to be awarded and in doing so to take a conservative approach allowing for reductions upon taxation; see [26]-[27] of *Al Sadik*.

42. In this case, SPV 21 has prepared a schedule setting out the hours spent by each fee earner and the charge out rate of such fee earner. Including the fees charged in respect of Mr Allen, the total amount

comes to US$212,204.64. In the event of costs being awarded on the standard basis, SPV 21 seeks an interim payment at the rate of 50%.

43. The Appellants challenge the time spent by Mr Chapman KC as set out in the schedule and contend that the level of his time spent is unreasonable given that this was an appeal and that he had appeared in the hearing before Asif J. They also contend that there has been a failure by Dillon Eustace to delegate work effectively, e.g. a more senior attorney prepared the list of corrections for the draft Appeal Judgment than was necessary.

44. Assessing the amount of an interim payment of costs is not the occasion for a detailed examination of the claimed costs; on the contrary a broad-brush approach is appropriate. In my judgment, an interim payment of 50% of the claimed costs in this case builds in a substantial cushion against future reductions on taxation. The points made by the Appellants can of course be made to the taxing officer in due course and he will decide whether they are valid or not but, in my judgment, they do not suggest that an interim payment of 50% is too high.

45. Accordingly, I would order an interim payment of 50% of US$212,204.64, namely US$106,102.33, which I would round down to US$106,000. This sum should be paid within 28 days of the handing down of this judgment.

(iv) Costs of the costs submissions

46. In my judgment, the costs of the costs submissions and the evidence in support should be considered as part and parcel of the appeal and accordingly the Appellants must pay the costs thereof on the standard basis, to be taxed if not agreed. To reflect a concern expressed by the Appellants, I make clear, for the avoidance of doubt, that this does not cover the costs of any taxation proceedings in due course, which will fall to be dealt with by the taxing officer in the usual way.

(v) Interest

47. Under GCR O.62, r.4(7)(g), the court may award interest upon any costs order. SPV 21 applies for an order that interest be paid at 2.375% per annum on its costs of the appeal from the date when it

paid those costs until reimbursement by the Appellants pursuant to the costs order. The Appellants submit that it is not necessary to award interest when the court is ordering an interim payment.

48. It may be some time before taxation is carried out and I see no reason why interest should not be ordered. As Parker J stated in *Ritchie Capital* (supra) at [44]:

> ***"…The guiding principle is that the paying party should normally provide reimbursement of costs incurred which should include a figure for interest on costs already paid…."***

49. I would therefore award interest at 2.375% per annum as applied for by SPV 21, but would clarify that the sum paid by way of interim payment pursuant to the above order of the court should be applied sequentially to the costs paid out by SPV 21, starting with the earliest costs incurred. In this way interest will cease to run on the earliest costs first.

Summary

50. In summary:

(i) The costs of the appeal are awarded against the Appellants on the standard basis, to be taxed if not agreed.

(ii) The costs of Mr Allen are in principle recoverable notwithstanding the fact that he was not admitted as a temporary advocate in connection with the appeal.

(iii) The Appellants shall make an interim payment on account of costs in the sum of US$106,000, such sum to be paid within 28 days of the handing down of this judgment.

(iv) The costs of these costs submissions and evidence in respect thereof shall form part of the costs of the appeal and accordingly shall be paid by the Appellants on the standard basis, to be taxed if not agreed.

(v) The Appellants shall pay interest at the rate of 2.375% per annum on the costs of the appeal from the date on which those costs were paid out by SPV 21 until reimbursement by the Appellants pursuant to the order at (i) above, provided that the sum of US$106,000 shall be applied sequentially to the costs incurred by the Appellants starting with those earliest incurred.

Sir Richard Field, JA

I agree.

Sir John Goldring, President

I also agree.