

Application by the Defendant seeking an order for the stay of the Plaintiff's application before the Court, pending a resolution of what are said to be connected proceedings in the British Virgin Islands and Mauritius.

[2021]GRC063

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Between **PILATUS (PTC) LIMITED** **Plaintiff**

-and-

RBC TRUSTEES (GUERNSEY) LIMITED **Defendant**

Hearing date: 6th September 2021

Judgment handed down: 22nd December 2021

Before: Richard James McMahon, Esq., Bailiff

Counsel for the Plaintiff: Advocate A M Davidson

Counsel for the Defendant: Advocate E R Gray

Cases, Texts & Legislation referred to:

The BVI Business Companies Act 2004

The Royal Court Civil Rules, 2007

Hulley Enterprises Limited v The Russian Federation [2021] EWHC 894 (Comm)

Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd [2020] UKSC 37

Marex Financial Ltd v Sevilleja [2020] UKSC 31, [2021] AC 39

Introduction

1. By an Application dated 12 August 2021, the Defendant, RBC Trustees (Guernsey) Limited, which is the former trustee of a Guernsey law discretionary trust known as the Shallan Trust, seeks an order staying the action brought against it by the current trustee of that trust, Pilatus (PTC) Limited, pending a resolution of what are said to be connected proceedings in the British Virgin Islands and Mauritius.
2. The Application is supported by an Affidavit of Elliot Aron, who works under the supervision of Advocate Gray, who appears on behalf of the Defendant. This Affidavit exhibits some correspondence between the Advocates following the decision I handed down on 14 May 2021 dismissing the Defendant's *exception de fond* relating to reflective loss, and some information about the proceedings in the other jurisdictions, particularly those taking place in the British Virgin Islands. By comparison, there is less material produced relating to the proceedings in Mauritius, but the Motion Paper from 2018 identifying the principal claim was exhibited.

3. In addition to the written submissions from both Advocates, I heard them elaborate on those arguments at the hearing on 6 September 2021. At the conclusion of that hearing, I reserved judgment. This judgment now sets out why I am dismissing the Defendant's stay application.

Facts

4. Some of the background relating to these proceedings was set out in the earlier judgment and I do not propose to repeat much of that detail in this judgment. I will, however, refer to the prayer of the Plaintiff in its Cause, which was tabled on 21 September 2018, to put the relief being sought into context. It seeks *inter alia*:

- (1) equitable compensation (including interest, if appropriate);
- (2) an account of and/or an inquiry as to the loss or diminution in the value of the Shallan Trust by reason of the loss of the deadlock on the board of Primefuels Investments Limited ("PIL") and/or representation on the board of Primefuels Holdings Limited ("PFHL"), any further loss or diminution in value caused by the actions of George Machan, New Rodina Limited (and more latterly Maxim Ventures Trading Corporation, but for ease of reference both will be referred to simply as "New Rodina") and Asif Abdulla made possible by reason of their unintended control of PIL and/or made possible by the Shallan Trust's loss of representation on the PFHL board, the costs incurred in trying to remedy the consequences of the Defendant's breaches of duty, including the costs of all litigation and other legal costs involved;
- (3) an order for the payment of the sums found due on the taking of such account and/or inquiry; and
- (4) all such further orders, declarations, account and inquiries as may be necessary to reconstitute the trust fund of the Shallan Trust.

Les Defences were tabled on 16 November 2018 and deny that the Plaintiff is entitled to any relief. The Defendant admits the majority of the steps in the process that was followed and which I will summarise but takes issue with the premise that they lead to the consequences advanced by the Plaintiff.

5. The assets of the Shallan Trust comprised one ordinary share in Shallan Group Holdings Limited ("Shallan Group Holdings") registered in the Defendant's name as trustee and one ordinary share in that company registered in the name of RBC Corporate Services (CI) Limited ("RBC Corporate Services") as nominee for the Defendant as trustee, plus cash held in the bank accounts in the Defendant's name as trustee. The Defendant provided corporate services (including directors and administrative services) to the underlying companies owned by the Shallan Trust through RBC Directorship Services (CI) Limited ("RBC Directorship") and RBC Corporate Services, which acted on the trustee's instructions and as its agent.
6. PIL is a BVI company. It is asserted by the Plaintiff that this entity represents a joint venture between the Somji family, who are the beneficiaries of the Shallan Trust, and Mr Abdulla, which is why it was structured in the manner it was. The shareholding in PIL was split equally between Shallan Overseas Investments Ltd ("SOIL") and New Rodina. From late 2009, George Machan, a director of New Rodina, and RBC Directorship were the directors. Until 30 October 2015, the secretary of PIL was RBC Corporate Services and the Defendant provided administrative services to PIL.

7. At the end of 2007, all the shares in SOIL were owned by Shallan Overseas Limited (“SOL”), largely directly, although one share was owned by the Defendant as nominee for SOL and, in turn, all the shares in SOL were owned by Shallan Group Holdings. New Rodina was ultimately owned or controlled by Mr Abdulla.
8. PIL owned 85% of PFHL, another BVI company, although this entity was subsequently migrated to and registered in Mauritius in mid-2011. The remaining 15% of the shares in PFHL were owned by successive third parties. There were various subsidiaries of PFHL.
9. The pleadings refer to various other agreements that were entered into between different groups of persons associated with PIL and PFHL, and which were set out in greater detail previously.
10. In or about August 2015, the RBC group decided on policy grounds that it wished its entities to exit relationships concerning certain geographical areas, including Kenya. This was explained in a letter sent that month to the then protector of the Shallan Trust. The protector’s reply sought an extension of 60 days to the proposed retirement date so as to ensure an orderly handover. However, on 30 October 2015, the Defendant retired as trustee of the Shallan Trust and was replaced by another trustee. The officers involved took steps to confirm this retirement and purported to appoint other entities to fill the roles previously undertaken by RBC entities. This included Chasseral (Directors) Limited as director. Mr Machan was informed the following month and, in January 2016, acting as sole director of PIL, he proceeded to accept the resignations of RBC Directorship and RBC Corporate Services but instead appointed other entities to perform the functions previously undertaken by RBC entities. As a result, the Plaintiff alleges that the loss of the benefit of deadlock in PIL has meant that effective control has passed to those acting for New Rodina. A consequence is that the Shallan Trust has lost its representation on the board of PFHL.
11. On or about 18 January 2018, SOIL commenced proceedings in the BVI against PIL, PFHL, New Rodina (including both that company and Maxim Ventures Trading Corporation), Fuel Transport Holdings Limited (“FTHL”), Mr Abdulla and Mr Machan. These are unfair prejudice proceedings under the BVI Business Companies Act 2004. The facts set out in SOIL’s Statement of Claim reflect those set out in the Plaintiff’s Cause, although the second half of that pleading descends into far greater detail about the steps allegedly taken by which control has been taken of PIL and so PFHL and the other companies in the Primefuels group. There are allegations that other parties have breached the joint venture agreement associated with the Primefuels group between the Somji family and Mr Abdulla and the agreements that related to how voting as shareholder and on the board of directors would be undertaken. There are allegations that Mr Abdulla has acted in breach of fiduciary duty. In short, the Defendants are claimed to have acted and continue to act contrary to agreed terms and/or understanding as to parity of interest, equal participation in the management of the Primefuels group and equality of voting rights in PIL between what are termed the Shallan Parties on the one hand and Mr Abdulla and the Rodina Parties on the other, thereby controlling the group for the benefit of Mr Abdulla and to the detriment and at the expense of the Shallan Parties and so have conducted and continue to conduct the affairs of PIL in a manner which is oppressive, unfairly discriminatory and/or unfairly prejudicial to the interests of SOIL as a member of PIL. Included among the heads of relief being sought are various orders that would restore the position within PIL to how it was expected to be when the Defendant resigned as trustee and RBC Directorship and RBC Corporate Services purported to appoint the entities it did. Further, SOIL seeks all necessary accounts and inquiries, an order against Mr Abdulla in respect of profits received by him and/or companies controlled by him, directly or indirectly, as a result of the breaches of duty pleaded and an order that he, New Rodina and others pay equitable compensation to SOIL. From the pleading it is apparent that Chasseral (Directors) Limited is the sole director of SOIL.

12. New Rodina's application to strike out this claim was dismissed in January 2019, but the judge decided that the claim should be stayed on case management grounds to await the outcome of the proceedings in Mauritius. The decision to stay was appealed by SOIL, but that appeal was dismissed in September 2020 (as were other appeals). In the course of its judgment, the appellate court referred to upholding the judge's decision because it was based on concerns about issues relating to costs and delays and fundamentally the risk of inconsistent judgments being delivered in the two sets of proceedings if the claim in the BVI were not stayed (para. 41 *et seq.*). PFHL may, once the stay has been lifted, challenge the jurisdiction of the court in the BVI and/or seek to set aside service. Maxim Ventures Trading Corporation and FTHL are in similar positions. Mr Abdulla is also seeking to set aside service, challenge jurisdiction and, in his own right, stay the claim pending resolution in Mauritius. Accordingly, even if the current stay were lifted, others may make these interlocutory applications rather than progressing towards a trial.
13. The proceedings in Mauritius were started on 28 February 2018 and are primarily concerned with FTHL's application for declaratory relief as to the composition of the board of directors of PFHL and a rights issue made by PFHL. The respondents to these proceedings are PFHL, PIL, SOIL and Maxim Ventures Trading Corporation. SOIL raised a number of objections, but these were rejected by the judge and this main action is stalled pending appeal, where FTHL is resisting the appeal and SOIL lodged a motion to seek to introduce new evidence, which was due to be heard after the hearing in this Court in September.
14. Following the judgment on the *exception de fond* earlier this year, the Plaintiff's Advocates wrote to the Defendant's Advocates proposing that there be a discrete trial on liability, leaving quantum to one side for the time being, setting out proposals for some case management directions. That letter pointed out that the proceedings in the BVI were currently stayed pending the determination of the proceedings in Mauritius. It noted that PIL is no longer taking an active role in the BVI proceedings and there had been and still were challenges to the jurisdiction of that court to be determined. There was a brief update about the proceedings in Mauritius having apparently stalled.
15. The response from the Defendant's Advocates on 26 July 2021 raised the likelihood that a stay would be sought, noting the importance of the proceedings elsewhere as they impact on the proper management of the present action and invited the Plaintiff to provide further details. In reply the following day, the Plaintiff stated that these proceedings have no relevance to the question of liability as between the parties to this action. The Defendant's Advocates indicated the following day that work on the stay Application had commenced. They pointed out that the case management proposals on behalf of the Plaintiff were not, in any event, agreed.
16. Prior to the hearing, the Plaintiff's Advocates informed the Defendant's Advocates that counsel acting in the BVI estimated that the shortest time to reach trial would be approximately three years, with a period of 9³/₄ years being the longest estimate. In respect of the proceedings in Mauritius, the timetable suggested around two years before conclusion there. The letter also indicated who the witnesses to be called on behalf of SOIL might be, indicating that just one of the witnesses who would be expected to give evidence in the BVI might be called in the present action.

Legal principles

17. It is helpful first to set out the legal principles applicable to this stay Application before considering the arguments in favour and against. Both Advocates accepted that the principles derived from these English cases can be used to guide the approach under Guernsey law.

18. Rule 50(2)(c) of the Royal Court Civil Rules, 2007 empowers the Court to stay the whole or any part of the proceedings until a specified date or event. This is part of the Court’s broad case management powers.
19. Advocate Gray refers to the five principles given by Henshaw J recently in Hulley Enterprises Limited v The Russian Federation [2021] EWHC 894 (Comm) (at para. 67):

“Factors identified in the cases as justifying a case management stay in the context of parallel proceedings include the following:

- i) *The risk of inconsistent decisions in proceedings in different jurisdictions is “always capable of amounting to a very strong reason for granting a stay, as the cases ... show and emphasise”:* Bundeszentralamt v Heis [2019] EWHC 705 (Ch) § 113; Ferrexpo AG v Gilson Investments Ltd [2021] EWHC 721 (Comm) § 155.
- ii) *The “costs and inconvenience of duplicated proceedings” to the parties, the court and other court users may favour a stay:* Citigroup Global Markets Ltd v Amatra Leveraged Feeder Holdings Ltd [2012] EWHC 1331 (Comm) § 76; Reichhold at p.182; Department of Trade and Industry v British Aerospace plc and Rover Group Holdings plc [1991] 1 CMLR 165 §§ 12-13.
- iii) *The existence of issues that are more appropriate for determination in the foreign proceedings is a factor favouring a stay. For example:*
 - a) *In Bundeszentralamt, Hilyard J granted a stay pending parallel litigation in Germany involving issues of systemic importance to German law, holding that:*

“[T]he ‘potential disaster from a legal point of view’, as in The El Amria ... Brandon LJ (as he then was) described the risk of inconsistent decisions in concurrent proceedings in different jurisdictions, is the more acute when in one of the jurisdictions the issue is a systemic one, or may be decided in a manner which has systemic consequences.” (§ 116)
 - b) *In Department of Trade and Industry v British Aerospace plc, the validity of a decision of the EC Commission was regarded as more appropriate for determination by the CJEU than by the English court (§§ 12-13).*
 - c) *In Prifti it was held to be “inherently inappropriate” for the English court to determine questions of Spanish law bearing on the validity of the court of first instance judgment while a Spanish appeal remained pending (§ 22).*
- iv) *A stay is more likely to be appropriate where there is a greater degree of overlap of issues between the English proceedings and the foreign proceedings, or where the foreign proceedings are likely to be determinative of all or part of the English proceedings:* Department of Trade and Industry v British Aerospace §§ 12-13; Prifti §§ 21 and 34.

- v) *The grant of a stay is more likely where any prejudice to the party resisting a stay can adequately be compensated by an award of interest, or is outweighed by the prejudice which would be caused by refusing a stay: Prifti § 34; Reichhold p.181 (see § 62.vii) above.)”*

20. In the previous paragraph, Henshaw J quoted a comment in the judgment given by Lord Reed in Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd [2020] UKSC 37, at para. 99, on which Advocate Gray also relies:

“The English courts have wide case management powers, and they include the power to impose a temporary stay on proceedings where to do so would serve the Overriding Objective: see CPR 1.2(a) and 3.1(2)(f). ... A temporary stay may be ordered where there are parallel proceedings in another jurisdiction, raising similar or related issues between the same or related parties, where the earlier resolution of those issues in the foreign proceedings would better serve the interests of justice than by allowing the English proceedings to continue without a temporary stay [see Reichhold Norway ASA v Goldman Sachs International [2000] 1 WLR 173]. But this would be justified only in rare or compelling circumstances ...”

Advocate Davidson has highlighted this final sentence, pointing out that this established principle from 2000 was expressly endorsed by the Supreme Court in this later case.

21. In Marex Financial Ltd v Sevilleja [2020] UKSC 31, [2021] AC 39, which featured significantly in the *exception de fond* judgment, Lord Sales offered a view about parallel proceedings (in para. 162) which Advocate Gray again turns to for support for the Application:

“If the company is joined as a party and does not advance its own claim at trial, it may be estopped from doing so in later proceedings. On the other hand, if the company does wish to pursue its claim, it may be beneficial in case management terms to allow the company’s claim to be tried first or at the same time as the shareholder’s claim, since then the extent of the company’s recovery can be brought into account when valuing the loss suffered by the shareholder claimant. A procedural approach allows for a nuanced adjustment of the vindication of parallel claims in the light of all relevant evidence about the circumstances regarding the interests of the company and the shareholder. The court can ensure that there is no double recovery and that the shareholder by his action does not deprive the company of sums properly due to it.”

The parties’ arguments

22. On behalf of the Defendant, Advocate Gray contends that staying this action would be the most efficient and fairest way of managing the entirety of the Plaintiff’s case. This is because the Plaintiff has sought to progress a hearing on liability without articulating the manner in which, if successful, quantum would fall to be resolved. The Guernsey action is the last in time of the related proceedings to have been commenced. Because what is complained about all relates to what has happened to PFHL in Mauritius, the primary proceedings, as the courts in the BVI have acknowledged, have to be those in Mauritius.
23. She suggests that the risk of inconsistent decisions is very acute in the current situation. The outcome of the proceedings in Mauritius will inform the claim in the BVI which should also precede the Guernsey action being determined because of the overlap between the issues, where the BVI proceedings are those of the company and the proceedings here are akin to those of the shareholder. This issue shades into the consideration of avoiding the costs and inconvenience of duplicated proceedings. Advocate Gray acknowledges that, because of the different identities of the parties, the costs themselves are not duplicated, but relies instead on the fact

that the parties to the present action need not be put to any expense because the issues between them may be informed by decisions elsewhere. In that manner, cost is avoided or reduced. Moreover, by staying the action and waiting, there will be no need to split the issues of liability and quantum, which will result in some saving of costs. She suggests that the better approach is not to consider whether the Defendant, as former trustee, facilitated the breaches alleged that follow, but rather for those issues to be determined in the jurisdictions best placed to make those determinations, so that consideration of the case against the Defendant can be informed by whether the breaches claimed actually occurred. In relation to the proceedings in the BVI, if it is found that SOIL suffered no loss, the Guernsey action may fall away or be much narrower in compass. Similarly, if SOIL gets compensation by succeeding in the BVI, the Guernsey action will similarly be unnecessary or significantly narrowed. Because the Plaintiff's claim is effectively for compensation, any delay can be reflected by a larger award of interest.

24. Advocate Davidson points out that the way the Plaintiff wishes to proceed is to focus first on liability, leaving any questions of compensation or other relief to a later stage. He objects to any suggestion that this proposed split process means that the onus lies on the Plaintiff to argue why a stay should not be granted; the Defendant should bear the burden of establishing that the stay sought by it be granted.
25. He argues that there is no risk of inconsistent findings of fact. Even if the actions of the other entities and persons are found to be valid, it does not excuse the Defendant in this action from having caused a situation where it permitted those persons to act as they did. He emphasises that the parties to this action are different from those litigating elsewhere. Although it has been suggested that there may be a need for this Court to resolve issues of Mauritian law, the admissions in paragraphs 78 and 79 of the Amended Defences show that the issues about the purported board meeting held by the Defendant's officers are not in dispute. He further suggests that there is no real overlap. Many of the facts pleaded are admitted and so the action will turn on whether the facts give rise to and constitute a breach of duty on the part of the Defendant as trustee. Further delay would be of prejudice to the Plaintiff because the passage of time will affect the quality of recollection of any individual giving evidence. The resolution of the issue of liability as between these parties will also potentially assist the Defendant, which might find that the action against it ends.

Discussion

26. As both Advocates recognise, the question as to whether to stay this action at this point falls within this Court's wide powers of case management. The prospect of waiting for a minimum of around three years before any stay of the action might be over is not an attractive one. Staying proceedings to await the outcome of other litigation is inevitably uncertain and that does not help. In those circumstances, the Defendant's Application would need to present a compelling case for exercising the power to stay this action and, in my judgment, that compelling case has not been advanced.
27. Taking a step back from what is happening in the BVI and Mauritius, although no one has said so explicitly, the action commenced by SOIL in the BVI appears to have precipitated a response by an entity involved in those proceedings deciding to seek a decision in the home jurisdiction of FTHL. (The position may not have been as complicated if FTHL had not migrated from the BVI to Mauritius because the issues would probably have been capable of being dealt with in the single set of proceedings.) All the parties to the proceedings in Mauritius are parties to the BVI claim, although there are some parties involved in the BVI who are not participating in Mauritius. The degree of overlap and commonality of interest as between those two sets of proceedings is clear. The decision of the BVI court to await the outcome of the Mauritius proceedings is understandable and the reasoning set out in the appellate court's decision provides a further helpful explanation of the factors that fall to be balanced. If the current

proceedings involved the same parties, or a subset of them, then a similar outcome might have followed. However, the basis of the present action is not as inextricably linked to either set of proceedings and so any overlap in the issues to be determined is markedly different.

28. Because this action is a breach of trustee's duty claim, it focuses less on whether what has happened could legitimately have happened and more on what the state of knowledge of those acting on behalf of the Defendant was at the material time relating to the reasons for the structure being set up as it had been. This extends to what they should have known and borne in mind before acting as they then did. As between the Guernsey action and the BVI claim, there is this degree of difference as well because this is not a shareholder action set against a company's similar claim. That was why I took the view that the Defendant's *exception de fond* could not provide a complete answer to this action, because it is not a classic case of case managing two sets of proceedings before this Court, one of which is a company's action and the other of which is the shareholder's action against the same wrongdoer. If it were, the domestic principles touched on in the *Marex* case might assist but they do not, in my view, fit squarely into the facts of the three sets of proceedings currently underway. Moreover, it is not simply a case of extending those principles to what are inter-jurisdictional sets of proceedings. That is because the claim in the BVI is not the same type of claim as the action before this Court. Whilst there will be a need to give proper account for any recoveries elsewhere, avoiding such double recovery will be something to address at a later stage.
29. I am satisfied that there is merit in splitting this action into two stages, the first of which will be to decide whether the Plaintiff can establish that there has been a breach of duty. This is simply to understand the backdrop against which the Application to stay falls to be considered. I am satisfied that the burden in respect of the Application remains with the Defendant. Although I have considered how this stage will fit in with the other proceedings, I do not think that the degree of overlap between those proceedings and this issue of liability is as great as it would be if relief were also being considered at a single trial, where the question of avoiding double recovery comes into sharper focus.
30. In particular, I have noted that the parties to this action are quite different from those who are litigating in the BVI and Mauritius. Adopting the language of the *Unwired Planet* case, the proceedings under consideration are not between the same parties and the Defendant is not related to any of the parties involved in the other proceedings. Those who will be witnesses in the various proceedings appear at first blush mostly to be different. This is not a case where the same witnesses will be involved where a stay in one jurisdiction may assist the parties' overall costs and preparation. The primary witnesses for both parties will be those who now act on behalf of the Plaintiff, who may well not be identical to those acting for SOIL, and those who were involved on behalf of the Defendant. It seems highly unlikely that those who will appear on behalf of the Defendant will be called upon to give evidence in the proceedings in the BVI or Mauritius. As Advocate Gray acknowledged, the second of the factors given in the *Hulley Enterprises* case can only be relied on to a lesser extent. In my view, there is little, if any, weight attaching to this factor because there is no overlap in the identities of the parties. I am not persuaded that these are even duplicated proceedings.
31. Taking the fifth factor next, as principally a claim for money to reconstitute the trust fund, it would be possible to compensate the Plaintiff for any delay through interest being available. However, the length of delay envisaged by the Application runs at upwards of three further years, and I think that is quite optimistic. What cannot necessarily be ascertained is whether the compensation eventually awarded, including any such interest, will adequately cover what might have been done with the assets had the Plaintiff had the full use of them throughout that time. There is an element of uncertainty but, in any event, this factor is of little direct relevance where remedies are to be left to a later time anyway. As a result, I am not persuaded that this factor assists the Defendant much.

32. I have given careful consideration to how much of a risk there is that there might be inconsistent decisions in the different proceedings (ie, the first factor), which I think necessarily has to be considered in the light of what issues are involved and the extent of overlap (ie, the fourth factor). Although the detail of quite how the Mauritian proceedings will resolve the proper composition of the board of directors of PFHL and the steps taken to make a rights issue, it strikes me that those proceedings will have to concentrate on the constitutional documents of the company and the agreements surrounding them. In turn, that outcome will affect whether what has happened in the BVI assists or damages SOIL's claim. The focus is on the lawfulness of the actions of those involved. As I have already noted, the action before this Court has regard to what the position may or may not be, but without needing to resolve whether what subsequently happened could or could not take place. Accordingly, the overlap is not a direct one and I am not persuaded that the outcome of the proceedings in Mauritius will be determinative of the action before this Court. Similarly, in relation to liability, I am not persuaded that the outcome of the proceedings in the BVI will be determinative of the question of liability, although it would affect the relief that is appropriate. Consideration of these two factors in this way results in my conclusion that there is not as great a risk of there being inconsistent decisions as there has been in the cases that are mentioned by Henshaw J. In this action, the Court will not need to resolve who the directors of PFHL are, but rather whether what the Defendant did created the opportunity for such steps as were taken to be taken.
33. That conclusion also deals with the third factor in the *Hulley Enterprises* case. The issues in the Mauritian proceedings are acknowledged to be proper issues for that court to determine, but there is no real overlap with the issues before this Court and, because the parties are different, the question of estoppel does not arise. In other words, awaiting the outcome of the Mauritian proceedings and, on the Defendant's case, also the proceedings in the BVI, will not automatically inform the outcome of the present action. The Defendant has not persuaded me that the combination of this and other factors should tip the balance in favour of granting the stay sought.
34. Although the Application refers to awaiting the outcome in both jurisdictions as the basis for the stay, I have considered whether there is any merit in waiting to see what happens first in Mauritius and then reviewing whether that means that there should be a further stay to await the resolution of the BVI proceedings. My primary reason for doing so is that it would leave this action in the same state as the BVI proceedings. I take the view, though, that this is no more attractive than awaiting the conclusion of the BVI proceedings, which would have the added benefit of meaning that there would not need to be a split trial on liability and quantum. As I have just noted, the outcome of the declaratory relief being sought in Mauritius does not directly affect the issues raised in this breach of trustee's duty claim. At best, it fills in some gaps which may reduce the work that will otherwise be required to prepare this action on liability only for trial. However, I am not satisfied that any such savings outweigh the prejudice of the delay that would be occasioned in progressing this trial. As a result, I am not persuaded that the just outcome is to grant what would inevitably be a shorter stay and then to take stock.
35. Weighing everything in the balance, I am satisfied that the issues raised in respect of whether the Plaintiff can establish liability against the Defendant do not depend on the resolution of either of the proceedings taking place in Mauritius and the BVI. The issues between the parties to this action are sufficiently different from those being litigated elsewhere that the prejudice to the Plaintiff, as well as to the Defendant, which should want to get this action resolved sooner rather than later, caused by an uncertain delay points away from granting the stay sought.

Conclusion

36. For the reasons I have given, the Defendant's Application to stay this action is dismissed. I expect that the parties will be able to agree the costs consequences that follow from that

decision, however, if that cannot be agreed, either party can raise the issue of costs when the action is next before the Court.

37. Because the action is not being stayed, the next step will be for a case management conference to be held. As I have indicated, this will need to focus on progressing the question of liability. The Advocates have corresponded about what directions might be sensible, but I have noted that there is no agreement as yet. In those circumstances, I will give them a little longer to see if agreement can be reached but, if not, then the onus will be on the Plaintiff to restore its application for a case management conference to be listed. This should be no later than early in 2022.