

Judgment of the court dealing with three consequential issues arising from the court's earlier judgment of 19 April 2024.

**[2024]GCA038**

IN THE COURT OF APPEAL OF GUERNSEY  
CIVIL DIVISION

ON APPEAL FROM THE ROYAL COURT OF GUERNSEY  
ORDINARY DIVISION

3 June 2024

Before: Jonathan Crow CVO, KC  
David Perry KC  
Sir Adrian Fulford, PC

Between: (1) WOLFGANG JOACHIM ERICH LANDL  
(2) ANDREA BRIGITTA SCHAEERER LANDL Plaintiffs  
(3) KHKJ HOLDINGS LIMITED  
(4) ALI HASAN MAHMOUD MOHAMED HUSAIN  
(5) KULDEEP SINGH LAMBA  
(6) GURVINDER SINGH LAMBA  
(7) L'OUILLET LIMITED  
(8) ANUPE DHORAJIWALA  
(9) RUPAL TERAIYA  
(10) RAJEN R. SHAH  
(11) TEO STRUCTURED INVESTMENTS LIMITED  
(12) JAMAL ALAMER  
(13) FABRIZIO CERÈ  
(14) MOHAMED NOORUDDIN  
(15) EUGENIO BERENGA  
(16) VELES MANAGEMENT CORP.  
(17) CAREY AG (AS TRUSTEE OF THE MARRAKECH TRUST)  
(18) VLADIMIR ISAKOV  
(19) NAJAH HASAN ALAALI  
(20) GIANCARLO PAROLO  
(21) LANDSEND INVESTMENTS LIMITED  
(22) YASSER JEIROUDI  
(23) LUXX PCC LIMITED (IN LIQUIDATION)

-and-

(1) STEPHEN WILLIAM HOGG  
(2) STEPHEN WATTS Defendants  
(3) IAN JAMES HENDERSON  
(4) EFG PRIVATE BANK (CHANNEL ISLANDS) LIMITED

**Crow JA**

## **INTRODUCTION**

1. This is the judgment of the court dealing with three consequential issues arising from the court's earlier judgment of 19 April 2024 ("**the Main Judgment**"). We will continue to use the same abbreviations as were adopted in the Main Judgment.
2. After the Main Judgment was delivered, the parties' respective legal representatives engaged in correspondence with a view to agreeing the terms of an Act of Court. A disagreement emerged between them regarding: **(i)** the question of when the issue of construction raised in the Directors' Counterclaim, and in para. 7(a) of the Plaintiffs' Réplique and para. 37 of their Defence to Counterclaim ("**the Construction Issue**") ought to be determined, **(ii)** the question whether directions should be given for further evidence and/or written submissions in relation to the determination of the Construction Issue, and **(iii)** the costs of the hearing in the Royal Court which led to the Judgment below.
3. The parties' competing arguments on the costs issue were clearly set out in that correspondence (including their comments on competing versions of the draft Act of Court). Although the Directors also explained in correspondence how they suggested the Construction Issue should be determined, it was not entirely clear what LPCC's position was on that issue. The court accordingly gave directions for an exchange of written submissions, with which the parties have helpfully complied. Neither party asked for a further oral hearing to determine the consequential issues arising. The court has now carefully considered the correspondence and the parties' written submissions and gives this ruling accordingly.

## THE DETERMINATION OF THE CONSTRUCTION ISSUE

4. The parties are agreed that the Construction Issue involves a short point which should be capable of determination with, at most, half a day's oral argument. They are also agreed that it should be determined by this court, as presently constituted, if possible, rather than being remitted for reconsideration by the Royal Court. The main difference between the parties turns on whether the determination of the Construction Issue ought to proceed immediately (as the Directors would prefer) or only after the appeal against the Strike-out Judgment has been determined (as LPCC would prefer).
5. We accept the Directors' argument for an accumulation of reasons:
  - (i) The Royal Court's refusal to deal with the Construction Issue summarily has caused a regrettable delay in its determination already: any further delay should be avoided, if reasonably possible. It seems likely that any appeal against the Strike-out Judgment will take a considerable time to reach a conclusion, and for that reason it is not desirable to delay the determination of the Construction Issue until after that appeal.
  - (ii) The Strike-out Judgment was dealing with entirely different issues, and we see no obvious read-across between the two appeals. Indeed, the Construction Issue arises under the Counterclaim, which has not been struck out.
  - (iii) Moreover, as we observed in the Main Judgment, the outcome of the Construction Issue is quite capable of impacting on the Plaintiffs' enthusiasm for pursuing the proceedings at all. That adds a further reason for resolving it promptly, rather than waiting until after the disposal of any appeal against the Strike-out Judgment.
  - (iv) As the Directors point out in their written submissions of 29 May 2024, the relief sought in their Counterclaim is for a declaration that they are entitled to be indemnified by LPCC against the Shareholder Plaintiffs' claims "*and the costs incurred in respect thereof*". The Directors say they have already incurred considerable costs in defending these proceedings, and they are entitled to an

early determination of their claim for an indemnity, irrespective of whether the Shareholder Plaintiffs' claim survives, following the appeal against the Strike-out Judgment.

- (v) Finally, we would observe that, if circumstances change before the Construction Issue has been determined by this court, either party will be at liberty to apply for a variation of the directions we propose to give now. They are not irreversible.
6. In light of the uncertainty and potential delay in determining any appeal against the Strike-out Judgment, and also in light of the distinction between the issues in that appeal and the Construction Issue, we do not consider that the two appeals should necessarily be determined together by the same constitution. For the reasons given above, we consider that the Construction Issue ought to be determined as soon as reasonably practicable, and it should not be delayed by any efforts to run it in tandem with the appeal against the Strike-out Judgment.

#### **DIRECTIONS FOR FURTHER EVIDENCE & SUBMISSIONS**

7. We reject LPCC's suggestion that directions should be given now for further evidence to be adduced before the court determines the Construction Issue. As Advocate Bamford (for LPCC) pointed out in his email of 13 May 2024 (albeit in connection with the debate about costs), "*LPCC's position at the hearing before Lieutenant Bailiff Finch was ... that the Directors' arguments forming the basis of their application for summary judgment were wrong ... and that section 10 of the POI Law does apply to the indemnities relied upon by the Directors are void [sic]*". In other words, it is LPCC's position that the parties attending the hearing in the Royal Court were fully prepared to argue the substantive Construction Issue in the event that the Lieutenant Bailiff was persuaded to resolve it summarily. That being the position in the court below, there can be no presumption that any further evidence is admissible in this court on that issue.
8. Indeed, it would be inconsistent with the terms of the Main Judgment to give directions now for further evidence to be adduced by either party. The conclusion we reached in

the Main Judgment was that the Royal Court ought to have determined the Construction Issue summarily: in other words, the matter should have been finally determined on the basis of the evidential material the parties had adduced in the court below. Consistency with that ruling demands that there should be no presumption that any further evidence is admissible.

9. It will, of course, be open to either party to make an application to adduce new evidence on appeal, and if such an application is made on proper grounds, the new evidence may be admitted. We do not intend to prejudice the outcome of any such application as may be made in due course: but we do consider that it would be inappropriate to give directions providing a general liberty to adduce new evidential material.
10. Finally in relation to the question of further evidence, there is one specific issue with which we should deal. LPCC contends (in para 4(b) of its written submissions of 24 May 2024) that, in the Main Judgment, this court indicated *“that the terms of the GFSC authorisation are relevant”*. That is not in fact what the court said. In para [29/30] of the Main Judgment, we said that *“it is possible that further material, such as the terms of the GFSC’s authorisation, might affect the outcome”* (emphasis added). We did not rule that the authorisation was relevant. Furthermore, the possibility that it might affect the outcome was mentioned as one of a list of possibilities whose cumulative effect was sufficient to persuade the court not to determine the Construction Issue at the hearing in April. We also ended that paragraph by saying that *“we do not consider any of those individual possibilities to be likely”*. Since then, no reasoned argument has been advanced as to why the terms of the GFSC’s authorisation would be relevant. In the circumstances, its potential significance remains a matter of speculation.
11. There is a separate question as to whether any directions should now be given for further written submissions in advance of the hearing to determine the Construction Issue. In our judgment, they should not, essentially for the same reasons as in relation to the previous question. Whilst we would not rule out the possibility of either party seeking to supplement its existing written arguments in due course, we do not currently regard it as either necessary or appropriate.

## **COSTS OF THE ROYAL COURT HEARING**

12. The Directors submit that the effect of the Main Judgment was to overturn the Judgment below, and accordingly they should have their costs of that hearing. In answer, LPCC submits that there were two issues before the Royal Court: one was whether the Construction Issue should be determined summarily, and the other was whether the Directors were correct in their argument on the substance of that issue. Only the first element was determined in the court below, and it is that element that has been overturned in this court by the Main Judgment. On that basis, LPCC says that the Directors are not entitled to their costs of the hearing in the court below, at least at this stage.
  
13. In our judgment, neither party's argument is wholly right or wholly wrong. Although the substance of the Construction Issue was before the Royal Court, it was not addressed in the Judgment below and the Directors might ultimately lose on that issue: it would therefore be wrong to award them all the costs of their application for summary judgment in the court below. On the other hand, in light of the outcome in the Main Judgment, it would be wrong to leave open the possibility that the Directors should have to pay any part of the costs of the hearing in the Royal Court. In the circumstances, we direct that the costs of the hearing in the court below should be the Directors' costs in the appeal, *i.e.*, the Directors will recover their costs of the Royal Court hearing if they win the substance of the Construction Issue, but they will not have to pay any part of LPCC's costs of the hearing below if they lose on the Construction Issue.