Neutral Citation Number: [2026] CA (Bda) 10 Civ

Civil Appeal No 18 of 2025

IN THE COURT OF APPEAL
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
COMMERCIAL COURT
BEFORE ASSISTANT JUSTICE SEGAL
CASE No 70 of 2024

IN THE MATTER OF CASSATT INSURANCE COMPANY LIMITED
AND IN THE MATTER OF SECTION 111 OF THE COMPANIES ACT 1981
AND IN AN APPLICATION FOR PERMISSION TO APPEAL TO HIS MAJESTY IN COUNCIL

Dame Lois Browne-Evans Building
Court Street
Hamilton HM12
Bermuda

Date: 20/07/2026

Before:

THE RT HON SIR CHRISTOPHER CLARKE, JUSTICE OF APPEAL
THE RT HON DAME ELIZABETH GLOSTER DBE, JUSTICE OF APPEAL
and
THE RT HON SIR GARY HICKINBOTTOM, JUSTICE OF APPEAL

- -

Between:

(1) JEFFERSON HEALTH NORTHEAST SYSTEM
(2) ABINGTON MEMORIAL HOSPITAL

Applicants/
Petitioners/Appellants

- and -

(1) CASSATT INSURANCE COMPANY LIMITED
(2) GRAND VIEW HOSPITAL

Respondents

Kyle Masters and Matthew Summers of Carey Olsen (Bermuda) Limited for the Petitioners/Appellants

Mark Chudleigh, Laura Williamson and Michele Gavin-Rizzuto of Kennedys for the Second Respondent

Hearing date(s): On the papers
Close of submissions: 28 May 2026
Date of Judgment: 20 July 2026

- -

APPROVED JUDGMENT

HICKINBOTTOM JA:

Introduction

1. On 24 April 2026, in a judgment now reported as [2026] CA (Bda) 4 Civ ("the Appeal Judgment"), following a rolled-up hearing, this Court unanimously refused leave to appeal or, having granted leave, dismissed all fourteen grounds of appeal of the Petitioners/Applicants, Jefferson Health Northeast System and Abington Memorial Hospital ("the Petitioners"), in their challenge to the decision of Assistant Justice Segal ("Segal AJ" or "the Judge") to dismiss their application for interlocutory relief. They had sought an interlocutory injunction restraining the First Respondent company, Cassatt Insurance Company Limited ("the Company"), and its sole shareholder and the Second Respondent, Grand View Hospital ("Grand View"), from selling any shares in the Company including, in particular, any sale by Grand View to Cassatt Solutions LLC ("the Buyer") pursuant to a Share Purchase Agreement dated 28 April 2025 ("the SPA" or "the Concert Transaction") or distributing any of the Company's assets in connection with any transaction involving the shares in the Company, pending the Court's final determination of their Petition under section 111 of the Companies Act 1981 in which they seek to enforce their rights as former shareholders in the Company ("the Section 111 Petition").

2. By Notice of Motion dated 28 April 2026, the Petitioners sought leave to appeal to His Majesty in Council ("the Privy Council") on the four grounds set out in a Schedule to the Notice, as follows:

> *1. The Court of Appeal erred in law in paragraph 241(ii) of the Appeal Judgment by dismissing the Appellants' Grounds 1, 3-4, and 11-12 because that disposition was based on the adoption of incorrect legal principles applicable to determining the adequacy of damages as part of the second limb of the test for an interim injunction to preserve the status quo pending the trial of an unfair prejudice petition.*
>
> > *a. The adoption of the incorrect legal principles resulted in an incorrect legal analysis which, among other things, caused the majority of the Court to wrongly conclude that the closing of the Concert Transaction will not prejudice the Company's ability to satisfy a buy-out order following trial.*
>
> *2. The Court of Appeal erred in law in paragraph 241(ii) of the Appeal Judgment by dismissing the Appellants' Grounds 1, 3-4, and 11-12 because that disposition was based on the adoption of incorrect legal principles applicable to determining the balance of convenience as part of the third limb of the test for an interim injunction to preserve the status quo pending the trial of an unfair prejudice petition.*
>
> > *a. The adoption of the incorrect legal principles resulted in an incorrect legal analysis which caused the Court to conclude in the alternative that, even if the closing of the Concert Transaction does prejudice the trial judge's ability to grant the Appellants an adequate remedy at trial, it is still just and convenient to refuse to grant the Appellants an interim injunction for various other reasons.*
> >
> > *b. The foregoing conclusion was an error of law and invalid exercise of judicial discretion because, by operation of law, it can never be*

just and convenient to refuse an interim injunction seeking to preserve the status quo pending the trial of an unfair prejudice petition if such a refusal would likely prejudice the trial judge's ability to grant the petitioner an adequate remedy at trial.

3. The Court of Appeal erred in law in paragraph 241(ii) of the Appeal Judgment by dismissing the Appellants' Ground 1 because that disposition was based on the incorrect conclusion that the Appellants would still be likely to have the ability to commence and continue a derivative claim to recover any shortfall in the buy-out order which may be granted as an oppression remedy at trial.

a. The Bermuda courts have no statutory power to authorise a petitioner to commence and/or continue a derivative claim, whether under section 111 of the Companies Act 1981 or otherwise.

b. The only derivative claim available under Bermuda law is the common law derivative claim. However, the closing of the Concert Transaction is likely to prevent the Appellants from satisfying the standing requirement necessary to continue a common law derivative claim.

c. The inability to commence and continue a derivative claim to recover any shortfall from a buyout order granted at trial constitutes further prejudice to the Court's ability to grant an adequate remedy at trial. That prejudice was not properly considered by the Court of Appeal as part of the second limb of the interim injunction test.

4. The Court of Appeal erred in law in paragraph 241(iii) of the Appeal Judgment by summarily revoking the undertakings in lieu of injunction proffered by Grand View and the Company without providing any reasoned basis for that disposition. The undertakings in lieu of injunction were proffered until 'final determination' of the Appellants' interim injunction application, which ought to be correctly interpreted by the Court as meaning until the exhaustion of all of the Appellants' appeal rights (including to the Privy Council).

We will refer to these grounds as "the PC Appeal Grounds".

3. That application was coupled with an application for a further stay or an interim injunction to prevent the Company and/or Grand View from selling the Company's shares by way of the Concert Transaction, or otherwise, pending the Privy Council's final determination of the appeal or, alternatively, if this Court refused the application for leave to appeal, until the Privy Council's determination of a renewed application for leave to appeal.

4. In support of the applications, the Petitioners lodged 26 pages of submissions supported by over a thousand pages of authorities. Grand View replied with submissions of 23 pages, supported by a further 250 pages of authorities; to which the Petitioners responded with a further 29 pages of submissions and 75 pages of authorities.

5. This is the judgment of the Court on those applications.

6. Having considered all that has been submitted, we refuse leave to appeal and the application for a further stay/interim injunction for the following reasons.

The Test for Granting Leave to Appeal

7. Appeals from the Court of Appeal to the Judicial Committee of the Privy Council are governed by the Appeals Act 1911, section 2(c) of which provides that, apart from circumstances which do not apply in this case, an appeal lies:

> "*… at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to H[is] Majesty in Council for decision".*

8. In this case, the Petitioners do not rely on anything other than the proposition that the questions raised by the PC Appeal Grounds are questions of "*great general or public importance*". With regard to that phrase, all parties relied upon the passage in the judgment of Clarke P in HSBC Limited v New Ocean Energy Holdings Limited [2022] Bda LR 110 (CA) at [10], to the effect that:

> *"… it is necessary for a would-be appellant who relies on the 'great general and public importance' provision to show that there is a dispute as to the applicable principle(s) of law rather than a dispute as to the applicability of settled principles of law to the facts of the case".*

As the Petitioners rightly accept (Written Submissions in Support, paragraph 15), the dispute as to any applicable principle has to be "seriously arguable". More broadly, as Baker P said in Sturgeon Central Asia Balanced Fund Limited v Capital Partners Securities Company Limited [2018] Bda LR 117 at [14], "*the very words great general or public importance plainly… indicate a very high threshold*".

9. Furthermore, it is well-established that the Courts – including this Court – will not generally hear and determine hypothetical issues, i.e. issues which do not have "*immediate and practical consequences for at least one of the parties*" (Zamir & Woolf, *The Declaratory Judgment*, 4th Edition, paragraph 4-35). As Munby J put it in R (Smeaton) v Secretary of State for Health [2002] EWHC 886 (Admin) at [21]: *"… the Courts… exist to resolve real problems and not disputes of merely academic significance"*.

The PC Appeal Grounds

10. Whilst the submissions lodged are extraordinarily – and quite unnecessarily – lengthy, the four PC Appeal Grounds are narrow, and each can be dealt with briefly, which we do below.

11. The PC Appeal Grounds, of course, have to be considered in their proper context. The hearing before Segal AJ was not the substantive trial of the Petition but on an interlocutory application for an interim injunction. As indicated in the Appeal Judgment (at [63] and following), this meant that the evidence before the Judge and this Court was limited, and any exercise of considering the "fair value" of the Petitioners' shares at the relevant date (i.e. 29 January 2024, the date of their exclusion from the Company by service of a Notice of Forced Withdrawal) was incapable of the mathematical exactitude that might be expected on the hearing of the Petition when each party will have an opportunity (e.g.) to adduce valuation evidence (none of which is yet before the Court) and to cross-examine the expert accountants/regulators whose evidence was before the Judge and this Court. It is wrong to suggest (as the Petitioners have tended to do) that

the assessment exercise performed by the Judge and this Court had, or could have had, a precision which, by virtue of its interlocutory nature, it cannot possibly have at this stage.

12. The fact that this is only an interlocutory application based on limited evidence and that the valuation of the shares required is dependent upon a number of future variables (such as the number and amount of claims that may be made on the policies being run off) means that any assessment of valuation is necessarily the subject of a very wide discretion. Furthermore, there is necessarily a risk that something may happen in the future before trial which might result in there being insufficient assets in the Company to pay the Petitioners the value of their equity as at 29 January 2024. We return to this when dealing with PC Appeal Grounds 1 and 2 (paragraph 24 below).

PC Appeal Grounds 1 and 2

13. The Appeal Judgment comprehensively sets out the background to the Section 111 Petition and the application for interlocutory relief, the Judge's reasons for dismissing the Petitioners' application for an interlocutory injunction restraining the Company and Grand View from selling the Company's shares to a third party, and this Court's reasons for dismissing the Petitioners' appeal against that ruling. It is unnecessary to repeat that at any length.

14. In its rolled-up application for leave to appeal and appeal to this Court from Segal AJ's ruling, the Petitioners relied on fourteen grounds of appeal. We refused leave to appeal on all grounds, except Ground 11 (in respect of which we concurred with the decision of the Judge but not his reasoning) and other grounds closely associated with Ground 11 (i.e. Grounds 1, 3, 4 and 12).

15. PC Appeal Grounds 1 and 2 focus on this Court's reasons for rejecting Ground 11, which challenged the Judge's conclusion that the Petitioners had failed to demonstrate that the closing of the Concert Transaction would result in "*a real risk that the Company will be unable to satisfy an order made after the trial of the Re-Amended Petition requiring it to pay the fair value of the Petitioners' shares*". As explained in paragraphs 148-149 of the Appeal Judgment, this was extended by the Petitioners at the hearing of the appeal to a detailed consideration of each step in the Judge's analysis as to whether the closing of the Concert Transaction would prejudice the Company's ability to comply with any Court order that it buys out the Petitioners by paying them fair value for their shareholding in the Company because of a distribution to Grand View of more than the value of its equity as at 29 January 2024.

16. In respect of Ground 11, in paragraphs 134-136 of the Appeal Judgment, the scope of this challenge was set out, which it would be helpful to repeat here:

> *134. The Petitioners' case on these issues before the Judge, so far as recovery against the Company is concerned, was set out in paragraphs 77-79 of their Skeleton Argument for the 1 July 2025 hearing in the Petition:*
>
> > *"77. First, the Petitioners are unlikely to be able to recover the full value of their equity interest from the Company because the terms of the Concert Deal require a significant dissipation of the Company's assets through payments to Grand View. The Concert Deal involves the Company directly or indirectly compensating Grand View up to $7,400,000 comprised of: (i) $3,450,000 as part of the Grand View Approved Distributions, (ii) $2,500,000 as part of*

the Grand View Expense Distributions, and (iii) $1,450,000 in the form of the Debt Write-Off.

78. To put those figures into perspective, the November 2023 WTW Report valued Grand View's less than one-third of allocated equity in the Company at just $916,000… That represents approximately 5.1% of the allocated equity in the Company, which roughly coincides with the percentage of the total premiums paid to the Company by Grand View. The Petitioners having historically paid over 90% of the premiums to the Company….

79. In a best-case scenario for Grand View, assuming Grand View and the Petitioners could split the full value of the unallocated equity on a pro rata basis (which is unlikely), the most that Grand View could expect to receive for its total equity in the Company is $2,617,275. However, by purporting to oppressively force the Petitioners out of the Company and secretly negotiate the Concert Deal, Grand View would now receive approximately $8 million more than it would otherwise be entitled to but for the oppression (including the compensation from the Company and the $3 million payment from [the Buyer]).”

135. This reflects the evidence of the Petitioners’ expert, Mr Osborne. He appears to have accepted that the valuations of total shareholders’ equity in the WTW November 2023 Report and in the June 2024 Accounts were properly equivalent to net asset value as it stood as at those dates; that, although the result of the run-off cannot be certain, there is no reason to think that the run-off would in itself reduce the total equity in the Company; and, so, if the Company did not distribute more than the value of Grand View’s equity, then the Company would have net assets sufficient to satisfy any buyout order of the Court in favour of the Petitioners (Osborne 1, paragraphs 18-20).

136. Therefore, the main focus of the debate before the Judge – and also before us – was whether the amount of the assets of the Company moving away from the Company in the form of distributions to Grand View as part of the Concert Transaction was more than the value of Grand View’s equity in the Company as at 29 January 2024. If it was, then it was argued that there was a risk that an award by the Court for the Company to buy out the Petitioners’ equity (valued as at 29 January 2024) might not be met by the Company; if it was not, then, with one caveat, there was no such risk. That was the main issue between the parties on the ‘merits’, both before the Judge and (under Ground 11 as expanded) before this Court. I will refer to it as ‘the central issue’. The caveat came in the form of narrow, identified post-Concert Transaction matters upon which the Petitioners relied to show risk because they might result in the diminution of the assets of the Company after the closing of the Transaction (such as the fact that the Buyer would be involved in the run-off as a sole shareholder and, thus, “unsupervised”) which were covered in the debate before us on the expanded Ground 11 but also as Grounds 5 and 7 in the appeal.

17. On that issue, in the Appeal Judgment, the preferred analysis of the majority of the Court (per Gloster JA and me) was, briefly, as follows (see [147]-[190], except [184]):

(i) We accepted the evidence of Mr Osborne (the Petitioners' expert) that valuations of the total shareholders' equity were properly equivalent to the net asset value at the respective dates of the relevant valuations, and there is no reason to think that the run-off would reduce that total equity.

(ii) So, if the Company did not distribute more than the value of Grand View's equity, either during or after the Concert Transaction, before trial of the Section 111 Petition, then the Company would have net assets sufficient to satisfy any buyout order the Court may make in favour of the Petitioners at trial.

(iii) Neither payments out of the Company as the result of the Concert Transaction itself, nor payments out during post-Concert Transaction matters relied upon by the Petitioners to show a risk to the assets of the Company after the closing of the Concert Transaction (such as the fact that the Buyer would be involved in the run-off as a sole shareholder and, thus, "unsupervised"), would result in the Company distributing more than the value of Grand View's equity.

(iv) So, the Judge's conclusion that the closing of the SPA/Concert Transaction would not materially prejudice the Company's ability to comply with a future Court order that it buys out the Petitioner by paying them fair value for their shareholding in the Company was one he was entitled to make and was, indeed, correct.

18. Clarke JA agreed with much of that analysis, but not that the analysis of risks of post-Concert Transaction payments out of the Company should be restricted to those identified and relied on by the Petitioners, in favour of a broader consideration of what might be the financial position of the Company at a future date. On that analysis, he concluded that:

(i) There was a real risk that the net assets of the Company would be less than the required $39m when payment to the Petitioners falls to be made, if that is ordered (see [254]-[264]).

(ii) However, in the exercise of its discretion, the Court should nevertheless not restrain the completion of the Concert Transaction (see [265]-[276]).

As an alternative analysis to that which we preferred, Gloster JA (see [243]-[252]) and I (see [184]) agreed.

19. As to PC Appeal Grounds 1 and 2, it is submitted that the Appeal Judgment erred in its approach to the second limb of the test for an interim injunction in the context of an unfair prejudice claim in two respects, namely (i) it failed to adopt the Petitioners' best case (their "best pleaded remedy") as the required "adequate remedy" at trial (PC Appeal Ground 1), and (ii) the analysis of Clarke JA erred in considering the balance of convenience having found that the Petitioners' adequate remedy at trial to be prejudiced by the Concert Transaction (PC Appeal Ground 2). It is submitted that these grounds raise questions of great general and public importance because the Court did not simply misapply well-established principles, but departed from the law as established by Arden LJ (with whom Thomas LJ agreed) in England and Wales in Pringle v Callard [2007] EWCA Civ 1075 ("Pringle") at [21]-[27] and subsequent authorities which had, until the Appeal Judgment, been assumed to apply in Bermuda. The Appeal Judgment has therefore led to uncertainty.

20. However, in relation to Ground 1, as described in [63]-[66] of the Appeal Judgment, the relevant law and the questions it required this Court to answer in the context of this case

were common ground and uncontroversial:

> *"63. It was common ground before us that the proper approach for an interim injunction in the context of an unfair prejudice claim was described by Hoffmann J in Re Posgate & Denby (Agencies) Limited [1987] BCLC 8 at ("Posgate") pages 13-15, i.e. the three-stage test set out in American Cyanamid Company v Ethicon Limited [1975] AC 396 applies but appropriately modified because stage 2 (whether damages would be an adequate remedy), taken literally, poses an inappropriate question in the context of unfair prejudice claims as the governing statutory scheme does not provide for damages as a remedy.*
>
> *64. Therefore, in order to succeed in its Interim Injunction Application to restrain the closing of the Concert Transaction, the Petitioners had to establish that:*
>
> *(i) there is a serious issue to be tried in the Section 111 Proceedings;*
>
> *(ii) without an injunction, the Petitioners would be unable to obtain an adequate remedy at trial; and*
>
> *(iii) the balance of convenience favours granting an injunction.*
>
> *65. However, although no relief (over and above an interim injunction) is sought against Grand View, Grand View accepted that there is a serious issue to be tried here. Furthermore, the ability to obtain an adequate remedy at trial substantially informs the balance of convenience exercise.*
>
> *66. Therefore, the argument before us focused on whether, if the injunction were not granted, the closing of the Concert Transaction would disenable the Petitioners from obtaining an adequate remedy at trial. Given that the Petitioners seek a buyout order at fair value as their primary relief in the Section 111 Proceedings, that remedy is financial; so, the question turns on whether the sale of the shares in the Company to the Buyer will or might adversely affect the Petitioners' right to be bought out in the sum which, at trial, the Court assesses is appropriate. In other words, can the Petitioners be compensated at trial by orders which enable them to receive the fair value of their shares or would the Concert Transaction result in their not recovering that fair value?...".*

21. The Petitioners seek to argue that in this respect the Court erred because the approach in Postgate was varied by Pringle and "*the English Courts have tended post-Pringle to determine the adequate remedy on a petitioner's best case scenario at trial*" (Written Submissions in Support, paragraph 26).

22. However, that submission does not withstand scrutiny. It is submitted that Arden LJ was seeking to settle two conflicting lines of first instance legal authority with respect to the second limb of the interim injunction test in the context of interlocutory injunctions in support of an unfair prejudice petition, namely Postgate and Re A Company [1985] BCLC 80 (Ch) ("Re A Company"). However, Pringle was an *ex tempore* judgment of a two-judge Court of Appeal in an appeal which focused on the first stage of the three-stage test, i.e. whether there was a serious issue to be tried (the Court concluding, in [30], that there was). It was an unlikely forum for a change of approach to interim injunctions in unfair prejudice petitions to be promulgated. In fact, far from taking a

different approach, Arden LJ (at [26]) cited the relevant part of Hoffmann J's judgment in Postgate with approval; and, in the passage relied on by the Petitioners, was stressing that the application of the well-established principles would depend on the facts and circumstances of the particular case. The other cases relied on by the Petitioners (such as Re A Company (which pre-dated Pringle) and Re Profile Partners Limited [2020] EWHC 1473 (Ch) (in which there is no reference to Pringle)) do no more.

23. In Pringle, Arden LJ did not identify, or purport to "settle", any difference in principle between the approach taken in Postgate and that taken in Re A Company. In neither Pringle nor any other case does the phrase "*a petitioner's best case scenario at trial*", or the like, appear; nor is that concept applied. In neither Pringle nor any other case is it suggested that, on an application for an interlocutory injunction in an unfair prejudice petition, the Court has to proceed on the basis that the Petitioners will succeed on every matter which is or may be in issue and that it is incumbent on the Court to injunct any step that a company wishes to take for the company's benefit, if that course may conceivably result in any risk of the Petitioner being prejudiced in relation to adequate remedy at trial. Arden LJ in Pringle, when using phrases such as *"the failure to maintain the status quo* ***may*** *affect the remedy sought in the petition"* (emphasis added), when seen in their full context, does not suggest otherwise.

24. Consideration of the second stage of the three-stage test requires a "real world" assessment of the prejudice to be assessed. That is accepted by the Petitioners elsewhere in their case. For example:

(i) In paragraph 27 of their Written Submissions in Reply, it is said that the burden on a petitioner to show that, without an injunction, they would be unable to obtain an adequate remedy at trial is satisfied when they show that *"the Company is* ***unlikely*** *to have sufficient assets to satisfy such buyout order by the time of trial"* (emphasis added: see also paragraphs 28 and 37 of their Written Submissions in Reply, and paragraphs 31 and 32 of their Written Submission in Support to like effect). The requisite degree of likelihood to justify an injunction may differ from case to case; but it is clearly not the case that a petitioner needs to show merely some possible risk of an appropriate buyout order not being satisfied.

(ii) As indicated above (paragraph 16), the Petitioners' expert, Mr Osborne, upon whose evidence the Petitioners expressly rely in relation to Ground 11, took such an approach, summarised in the Appeal Judgment at [135] as follows (emphasis added):

> *"He appears to have accepted that the valuations of total shareholders' equity in the WTW November 2023 Report and in the June 2024 Accounts were properly equivalent to net asset value as it stood as at those dates; that, although the result of the run-off cannot be certain,* ***there is no reason to think*** *that the run-off would in itself reduce the total equity in the Company; and, so, if the Company did not distribute more than the value of Grand View's equity, then the Company would have net assets sufficient to satisfy any buyout order of the Court in favour of the Petitioners."*

25. The short answer to Ground 2 is that, if this challenge bites at all, it only does so in respect of Clarke JA's alternative analysis: it has no purchase on the preferred analysis of majority of the Court, who concluded that neither payments out of the Company as the result of the Concert Transaction itself, nor payments out during post-Concert

Transaction matters relied upon by the Petitioners to show risk because they might result in the diminution of the assets of the Company after the closing of the Concert Transaction (such as the fact that the Buyer would be involved in the run-off as a sole shareholder and, thus, "unsupervised"), would result in the Company being unable to meet any buyout order made by the Court at trial. The Petitioners appear to accept (as is the case) that, in these circumstances, they fail to overcome the second limb of the three-stage test.

26. But, in any event, Arden LJ did not lay down a rule that, if the adequate remedy is likely to be prejudiced, as a matter of law, it cannot be just and convenient to refuse to grant an injunction. We accept that, generally, if the Court concludes that the remedy is likely to be prejudiced then generally it will conclude (sometimes easily) that an injunction should be granted. However, having drawn the first conclusion, it still has to go on and consider whether, nevertheless, it should exercise its discretion to grant or refuse an injunction. The contrary is not arguable. That exercise requires an assessment by the Court of the relevant factors. The reasons of this Court for concluding that, even if there were a real risk or likelihood of prejudice to an adequate remedy, the Court's discretion should be exercised to refuse an injunction here were set out in the Appeal Judgment at [265]-[275] (per Clarke JA) and [243]-[252] (per Gloster JA with whom I agreed at [184]). It does not appear to be contended by the Petitioners that the Court erred in exercising its discretion as it did. Insofar as any such contention is made, it is not arguable.

27. For those reasons, we refuse leave to appeal in relation to PC Appeal Grounds 1 and 2 on the basis that it is not seriously arguable that this Court erred; and, in any event, neither ground arguably raises any question of great general and public importance. The grounds are no more than a disagreement as to how this Court applied (unarguably, lawfully) well-established and uncontroversial principles to the circumstances of this case.

PC Appeal Ground 3

28. Ground 1 of the Petitioners' Grounds of Appeal to this Court challenged the Judge's finding that Section 111 gave the Bermuda Courts the power to authorise a derivative claim as part of granting an oppression remedy.

29. In the Appeal Judgment, that issue was not addressed because we accepted – and proceeded on the basis that – the Judge's finding that there would be a real risk that, if called upon to do so, Grand View would not be able to satisfy a buyout order if the Company did not do so; but the majority (Gloster JA and me) concluded that the Company would be able to meet such an order, so Grand View's ability to do so in default was not in issue. Furthermore, Clarke JA also proceeded on a basis that excluded any chance of Grand View contributing to a buyout. Hence, as indicated at [215(iv)] of the Appeal Judgment: "*Consideration of a process under which Grand View might be called upon to assist in meeting such an order is consequently unnecessary*".

30. This ground raises an issue which is very clearly academic to the outcome of this appeal; and there is no other compelling reason why leave to appeal should be given.

PC Appeal Ground 4

31. In [241(iii)] of the Appeal Judgment, all injunctions and undertakings that would otherwise prevent the sale of the Company's shares were revoked to allow the Concert Transaction to proceed. This was translated into paragraph 4 of the Order of 23 April

2026, subject to paragraph 5 which stayed the revocation in paragraph 4 until two days after the determination by this Court of any application for leave to appeal or further interim relief.

32. The relevant undertakings to the Court in lieu of a Court Order not to sell shares in the Company etc given (i) by the Company in the Consent Order dated 5 June 2025 ("the Company Undertaking") and (ii) by Grand View in the Consent Order dated 23 July 2025 ("the Grand View Undertaking") were expressed to be until "the final determination" of the Interim Injunction Application. The Petitioners submit that the revocation of those Undertakings by this Court was unlawful for two reasons. First, this Court had no power to revoke the Undertakings, and should have simply declared that they remain enforceable until the exhaustion of all appeal rights to the Privy Council. Second, the Appeal Judgment gave no reasons for the revocation.

33. This ground is legally hopeless. The Company Undertaking was not given until "final determination" of the application, but rather *"until the Summons has been heard and determined"*. Even then, the parties were given express *"liberty to apply for such further or other directions as may be required at the close of the hearing"*. The Grand View Undertaking was indeed said to be *"until final determination of the injunction application"*, but it continues "*or until the parties agree otherwise in writing* ***or further order of the Court***" (emphasis added). On the wording of these Consent Orders, it is simply not arguable that this Court did not have the power to revoke these Undertakings insofar as they remained in place. In any event, these Undertakings were in lieu of a Court Order. The Court always has the power to review and, if necessary, revoke an order where (as here) the interests of justice require.

34. The suggestion that the parties did not know why the Undertakings had been revoked is disingenuous. This Court rejected most of the grounds of appeal before it as being unarguable and dismissed the appeal on Ground 11 (and the associated grounds). In that judgment/order, the Court did not have to anticipate an application for leave to appeal to the Privy Council. When that application was made, this Court agreed to retain the prohibition on the sale of the Company shares etc until two days after the application for leave to appeal to the Privy Council had been determined by this Court. Not only were the reasons for revoking the Undertakings clear, no conceivable injustice has been caused to the Petitioners in the way in which the prohibition on the sale of shares etc has been dealt with by this Court.

35. We deal with the application for a stay pending any application to the Privy Council for leave to appeal below (paragraph 37-40),

<u>Application for Leave to Appeal to the Privy Council: Conclusion</u>

36. For those reasons, we refuse leave to appeal to the Privy Council.

<u>Application for Interim Relief pending any Further Application to the Privy Council</u>

37. In the event that this Court refuses leave to appeal to the Privy Council, as it has done, the Petitioners apply for a stay or injunction to prevent the sale of the Company's shares etc pending any further application to the Privy Council itself for leave to appeal.

38. The Order of this Court of 23 April 2026 imposed a stay on the revocation of the orders and undertakings preventing the sale of the shares etc until two days after the determination by the Court of the applications for leave and further interim relief. Whilst that stay will remain in place until two days after the date of this judgment, we are not

minded to grant any further stay or other order.

39. As indicated above, we do not consider any of the PC Appeal Grounds to be arguable let alone as satisfying the very high "*great general and public importance*" hurdle. Furthermore, the Judge concluded that the sale of shares in the Company would be to the Company's considerable advantage, as it would (amongst other things) ensure stability in the Company and that the run-off was conducted by personnel experienced in that field. Further delay in the sale would potentially be of considerable detriment to the Company, and to its employees and other policy holders, because the Concert Transaction may fall through because the Buyer walks away. In those circumstances, we do not consider it appropriate to grant a yet further prohibition on the completion of the Concert Transaction.

40. The approach that we propose to take is in accordance with that suggested in Darrell v Frisby & Johnston [2023] CA (Bda) 31 Civ, approving and applying the English case of Asset Co plc v Grant Thornton UK LLP [2019] EWHC 592 (Comm), including that the normal rule is for no stay to be granted.

41. For those reasons, we refuse the application for any further stay or other order that would disenable the Company and Grand View from, for example, closing the SPA/Concert Transaction or otherwise implementing that transaction.

Costs

42. We dealt with the costs of the application for leave to appeal and the appeal to this Court in the substantive judgment (at [238]-[241]).

43. The grounds for leave to appeal to the Privy Council and for a further stay were substantial in length, such that we granted Grand View the opportunity to respond. In the circumstances, we order the Petitioners to pay Grand View's costs of these additional applications to be taxed on the standard basis if not agreed.

Gloster JA

44. I agree.

Clarke JA

45. I also agree.

Signed

C.S.C.S. Clarke

Clarke JA

Elizabeth Gloster

Gloster JA

Gary Hickinbottom

Hickinbottom JA