



Neutral Citation Number: [2021] CA (Bda) 10 Civ

Case No: Civ/2020/5

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS
ORIGINAL COMMERCIAL JURISDICTION
THE HON. CHIEF JUSTICE
CASE NUMBER 2017: No. 293**

Sessions House
Hamilton, Bermuda HM 12

Date: 28/06/2021

Before:

**THE PRESIDENT, SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL ANTHONY SMELLIE
JUSTICE OF APPEAL DAME ELIZABETH GLOSTER**

Between:

CREDIT SUISSE LIFE (BERMUDA) LIMITED

Appellant

- and -

- (1) MR BIDZINA IVANISHVILI**
- (2) MRS EKATERINE KHVEDELIDZE**
- (3) TSOTNE IVANISHVILI (an infant, by his mother and
next friend, Mrs Ekaterine Khvedelidze)**
- (4) MS GVANTSA IVANISHVILI**
- (5) MR BERA IVANISHVILI**
- (6) MEADOWSWEET ASSETS LIMITED**
- (7) SANDCAY INVESTMENTS LIMITED**

Respondents

Mr. Stephen Moverley Smith QC (instructed by Mr John Wasty, Mr Hannah Tildesley and
Mr Sam Riihiluoma of Appleby (Bermuda) Ltd.) for the Appellant

Mr. Charles Hollander QC (instructed by Ms Sarah-Jane Hurrion and Ms Judith Roche of
Hurrion & Associates) for the Respondents

Hearing dates: 4th June 2020

RULING

CLARKE P:

1. This is the ruling of the Court.
2. On 7 October 2020, the Court of Appeal delivered judgment ([2020] CA (Bda) 13 Civ), (i) granting the Appellant permission to appeal Grounds of Appeal 1, 2, 4 and 6 (permission having been refused below); (ii) dismissing the appeal in respect of Grounds 1, 2, 3, 4 and 6; and (iii) allowing the appeal with respect to Ground 5. 2. The Order upon Judgment was delivered on 7 October 2020, providing the parties with 14 days to file written submissions on costs.
3. Written submissions on costs were filed by the parties on 21 October 2020. Unfortunately, owing to an administrative oversight, those submissions were not provided to members of the Court of Appeal until 25 June 2021 and it was only then, for the first time, that the members of the Court saw those submissions. The court apologises to the parties for the delay, but would have welcomed an enquiry from counsel at an earlier date.
4. The Respondents ask for their costs of both the appeal and the leave to appeal applications. They submit that they succeeded in this court both (i) on all the grounds relating to the powers of the Bermuda court (Ground 1 to 4), and (ii) in relation to the issue of fact on Swiss law which involved reviewing the expert evidence heard by the Chief Justice on Swiss law (Ground 6). They refer to the fact that proceedings have been substantially on hold since the first instance judgment because the Defendant Appellant sought and obtained a stay in respect of Grounds 3 and 5 pending appeal. They further submit that the only ground on which CS Life 2 succeeded was a short and narrow point of law on waiver of privilege (Ground 5).
5. In the alternative, the Respondents submit that, if, as a result of the Appellant's success on ground five, the court is unwilling to give the Plaintiffs all of their costs, a 90% or 95% order would be appropriate.
6. The Appellant, on the other hand, submits that, since each party has succeeded on a significant aspect of the appeal, the appropriate order is no order as to costs.
7. We do not agree with the Appellant's submissions. The clear winner on the appeal was the Respondents. In our view they are entitled to have their costs of both the appeal and the leave to appeal applications paid by the Appellant, but reduced by 5% to reflect the Appellant's success in relation to the short and narrow point of law on waiver of privilege (Ground 5) upon which it succeeded. Accordingly, we so order. The parties are directed to submit a draft order giving effect to this ruling.