In The Supreme Court of Bermuda

CIVIL JURISDICTION

2020: No. 418

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF THE REGISTRAR OF COMPANIES' ACT OF REGISTERING AND/OR DECISION TO REGISTER A CERTIFICATE OF CANCELLATION OF LIMITED PARTNERSHIP AND A CERTIFICATE OF CANCELLATION OF EXEMPTED PARTNERSHIP IN RESPECT OF RICHINA PACIFIC LIMITED PARTNERSHIP

AND IN THE MATTER OF THE REGISTRAR OF COMPANIES' ACT OF ISSUING AND/OR DECISION TO ISSUE A CERTIFICATE OF DEPOSIT OF CANCELLATION OF EXEMPTED AND LIMITED PARTNERSHIP IN RESPECT OF RICHINA PACIFIC LIMITED PARTNERSHIP

AND IN THE MATTER OF SECTION 20 OF THE EXEMPTED PARTNERSHIPS ACT 1992 AND SECTION 8F OF THE LIMITED PARTNERSHIP ACT 1883 AND RELATED LEGISLATION

BETWEEN:

(1) ACTIVE EQUITY HOLDINGS LIMITED

(2) SIR PAUL COLLINS

(3) IDES LIMITED

(4) COHIBA TRADERS LIMITED

(5) PAUL COLLINS FAMILY TRUST

Applicants

-and-

THE REGISTRAR OF COMPANIES

Respondent

JUDGMENT

Application for judicial review of the decision of the Registrar of Companies, Registration of Certificates of Cancellation of Exempted Partnership and Limited Partnership, Issue of Certificate of Deposit of Cancellation of Exempted and Limited Partnership, Illegality, Irrationality

Date of Hearing: **17 May, 14 June 2022**
Date of Judgment: **31 August 2022**

<u>**Appearances**</u>**:** **Dantae Williams, Marshall Diel & Myers Limited, for Applicants**

Delroy Duncan QC and Ryan Hawthorne, Trott & Duncan Limited, for Respondent

JUDGMENT of Mussenden J

<u>**Introduction**</u>

1. In these proceedings dated 18 November 2020 the Applicants seek judicial review of the Registrar of Companies' (the "**Registrar**"):
    a. Act of registering or decision to register, on 29 June 2020, a Certificate of Cancellation of Limited Partnership and a Certificate of Cancellation of Exempted Partnership (the "**Certificates**") in respect of Richina Pacific Limited Partnership ("**RPLP**") pursuant, or purportedly pursuant, to section 20 (1) of the Exempted Partnerships Act 1992 (the "**EPA**") and section 8F (2) and (3) of the Limited Partnerships Act 1883 (the "**LPA**") with effective date of cancellation as at 26 June 2020; and
    b. Act of issuing or decision to issue a "Certificate of Deposit of Cancellation of Exempted and Limited Partnership" (the "**Certificate of Deposit**") in respect of RPLP and recorded as given by the Respondent on 3 July 2020, evidencing such purported registration (all of which are collectively referred to as the "**Decisions**").

The Parties

The Applicants

2. All of the Applicants are legal owners of units in and limited partners of RPLP, an exempted limited partnership registered under the laws of Bermuda and formed *inter alia* pursuant to an Exempted Limited Partnership Agreement dated 28 December 2018 (the "**Partnership Agreement**").
    a. The First Applicant, Active Equity Holdings limited ("**AEHL**") is a company limited by shares which was incorporated in New Zealand. It is the legal owner of 52.54 units (approximately 2.627%) in RPLP.
    b. The Second Applicant, Sir Paul Collins ("**Sir Paul**"), is a director of AEHL. He is the legal owner of 10.75 units (approximately 0.5375%) in RPLP.
    c. The Third Applicant, Ides Limited is a wholly owned subsidiary of AEHL. It is the legal owner and registered holder of 41.50 units (approximately 2.075%) in RPLP.
    d. The Fourth Applicant, Cohiba Traders Limited is owned by the Second Applicant. It is the legal owner and registered holder of 6.49 units (approximately 0.3245%) in RPLP.
    e. The Fifth Applicant, the Paul Collins Family Trust holds 0.75 units in RPLP (approximately 0.0375%). It holds an approximate 20% shareholding in AEHL.

The Respondent

3. The Respondent is a functionary of the Bermuda government appointed under the Companies Act 1981. Exempted limited partnerships are created by registration by the Registrar and the Registrar is also responsible, *inter alia*, for the termination by cancellation of exempted limited partnerships.

Other Relevant Parties

4. Richina Pacific Limited ("**RP Company**") operated as a holding company of a group of companies. The primary purpose of the group of companies was to invest in China in the sectors of manufacturing and real estate associated with the manufacturing businesses.

5. RPL GP Ltd is the General Partner of RPLP, a company registered under the laws of the British Virgin Islands (the "**General Partner**").

6. Mr. Richard Yan ("**Mr. Yan**") is a former director and CEO of RP Company. He is the sole director and sole shareholder of the General Partner and the founder of the Richina Pacific Group of Companies (the "**Richina Pacific Group**") which is a group of companies with diversified operations in New Zealand and China.

The Judicial Review Application

7. The Applicants seek judicial review of the Decisions on the grounds of illegality and irrationality. They argue that the Decisions are *ultra vires* nullities on those grounds as they were made in breach of common law and statutory duties of proper enquiry, as a consequence of which the Decisions ignore relevant considerations and do not "add up" in the language of the authorities. Thus, the Decisions are void and incapable of producing legal effects *ab initio*, and that there is nothing about the circumstances of the case which should deter the Court, in the exercise of its discretion, from granting the remedies sought.

8. The Applicants seek relief as follows:
   (i) An Order granting leave to the Applicants to apply for judicial review of the Decisions.
   (ii) An Order of certiorari to remove the Decisions into the Supreme Court for the purpose of their being quashed as ultra vires, void and of no effect.
   (iii) An Order declaring that the RPLP remained in existence after the Decisions and continues to remain in existence.

(iv) An Order directing the Registrar to rectify the relevant register or registers accordingly.

(v) Costs.

(vi) Such further or other relief as this Honourable Court thinks fit.

Statement of Grounds on which Relief is Sought

9. On 9 December 2020 the Court granted leave to apply for judicial review of the Decisions on the grounds as set out in the Form 86A of illegality and irrationality which were dealt with together in the submissions.

Background as provided by the Applicants

Background to RP Company Conversion to RPLP and the Termination of RPLP

10. Sir Paul filed an affidavit sworn on 18 November 2020 in which he set out the background to the application. He stated that the most important aspect of the background is the ongoing Supreme Court proceedings filed by the Applicants against the General Partner of RPLP for breaches of statutory, contractual and fiduciary duties owed to the partnership and the Applicants (Supreme Court of Bermuda, Civil Jurisdiction 2020: No 209 (the "**Breach Proceedings**")).

11. On 28 December 2018, RP Company was converted to RPLP pursuant to section 132N of the Companies ACT 1981. Thus RPLP is an exempted limited partnership with legal personality and created pursuant to and governed by the EPA, the LPA, the Partnership Act 1902 ("**the PA**") and the Partnership Agreement. The conversion was effected pursuant to the Certificate of Conversion dated 9 March 2019. RP Company was registered as RPLP by the Registrar on 18 April 2019 under the EPA, LPA and the PA. The Applicants as shareholders of RP Company prior to the conversion became limited partners of RPLP upon the conversion. Schedule A of the Partnership Agreement contains the list of limited partners in RPLP.

12. Over time a dispute, including failure to provide information to the Applicants, arose between the Applicants and the General Partner in its conduct of RPLP leading to the Breach Proceedings.

13. On 26 June 2020 Marshall Diel Myers ("**MDM**") received a letter from Conyers Dill & Pearman ("**Conyers**") acting on behalf of the General Partner informing that the General Partner had passed a resolution to advance the termination date of RPLP to 26 June 2020 on the basis of "*current economic circumstances which ... make the investment objectives unlikely to be met*". That letter contained other details. Prior to MDM receiving that letter, the General Partner had not provided notice of its intention to terminate the Partnership Agreement. Thereafter there was correspondence between the law firms as MDM acting for the Applicants set out various positions including that the purported attempt to terminate RPLP was a breach of the Partnership Agreement and ineffective for various reasons.

14. On 1 July 2020 the Applicants filed their Writ in the Breach Proceedings. There were several hearings and orders including injunction orders. Also, there was further correspondence between the firms and to the Applicants about the termination and the distribution of assets, including a purported distribution of shares in a subsidiary company Richina Pacific (China) Investment Limited that Sir Paul states had not happened by the time he swore his affidavit.

Background to the actions of the Registrar

15. On 15 July 2020 MDM caused a search of the RPLP file at the Registrar's Offices. There was no Certificate of Cancellation on the file.

16. On 21 July 2020 Ms. Tornari of MDM spoke to an official of the Registrar's office to put the Registrar on notice of the Breach Proceedings and the injunction orders. She was informed then that RPLP was dissolved on 29 June 2020 and the file had been archived.

Due to Covid-19 restrictions and staff working from home, the RPLP file had not yet been updated.

17. On 22 July 2020 Ms. Tornari sent correspondence to the Registrar to put him on notice of the Breach Proceedings and the injunction orders to ensure that the General Partner abided by the terms of the injunction orders, including not to take any steps with the Registrar that would be in breach of them.

18. On 23 July 2020 Ms. Memari, special legal counsel to the Registrar, sent correspondence to MDM providing a timeline of events as follows:
    a. RPLP submitted a Certificate of Cancellation to the Registrar on 26 June 2020 in accordance with the provisions of section 20(2) of the EPA;
    b. The Certificate of Cancellation was registered on the Registrar's electronic register by changing the status of RPLP to "dissolved"; and
    c. A Certificate of Deposit of Cancellation of Exempted and Limited Partnership was issued by the Registrar on 3 July 2020 and transmitted electronically to RPLP via the resident representative.

19. Sir Paul stated that he has been advised that in light of the provisions of the applicable legislation and of the Partnership Agreement, the statutory requirements for the registration and issuance of the certificates were not met and that they are therefore null, void and of no effect. Further, he stated that the purported cancellation of RPLP prior to the proper, valid and effective distribution of assets has left the Applicants in an impossible position. The Hon. Chief Justice in the Breach Proceedings indicated in *obiter* comments that he did not see the benefit in the Applicants continuing their Breach Proceedings on the basis that RPLP is supposedly no longer in existence, based on the Certificate of Cancellation. Sir Paul maintained that the Registrar should not have accepted the contents of the resident representative's letter to the Registrar without investigating the same to be truthful and in accordance with the Partnership Agreement and should not have registered the Certificate of Cancellation of RPLP.

Background as provided by the Respondent

20. The Registrar filed an affidavit sworn 3 December 2021. He set out that he did not believe that the registration of the certificates of cancellation by RPLP was unlawful or irrational as the provisions of the EPA and LPA were applied correctly.

21. The Registrar stated that on 29 June 2020 he received a letter from Conyers requesting that the Certificate of Cancellation of Limited Partnership and the Certificate of Cancellation of Exempted Partnership by RPLP be registered. The contents of the documents were examined by reference to the relevant legislation and found to be compliant. Accordingly, the Certificate of Deposit of Cancellation of Exempted and Limited Partnership dated 3 July 2020 was issued by the Registrar in accordance with law. Further, MDM's letter of 22 July 2020 was four weeks after the date of the certificates of cancellation. Thus, there was no statutory power for the Registrar to revoke the registration of a certificate of cancellation that had been registered in accordance with the requirements of the relevant statutory provisions.

22. The Registrar also stated that if he were to take steps to look behind such certificates in order to satisfy himself of the "prerequisite" statutory requirements imposed on a partnership wishing to dissolve itself as suggested by Sir Paul, then such an act would be *ultra vires* for exceeding the Registrar's functions under the Partnership Act and the Registrar of Companies (Compliance Measures) Act 2017 (the "**Compliance Act**").

23. The Registrar disagreed with the Applicants' interpretation of section 6 of the EPA because it ignored the evolution of the registration process under section 6 and 9 to understand why neither the BMA nor the Registrar request a copy of a partnership agreement. He explained that pursuant to an amendment to section 6 in 2009, the general nature of the business to be transacted by the exempted partnership is no longer required to be specified. Also, pursuant to an amendment to section 9 in 2009, a copy of a partnership agreement was no longer required to be filed with the Registrar.

24. The Registrar stated that the Compliance Act takes its genesis from the OECD's peer review of Bermuda's legal and tax system and financial sector and its recommendation. Thus, the Compliance Act was brought into force to expand the Registrar's powers to monitor compliance with their statutory requirements by registered entities through inspection and enforcement so that Bermuda was compliant with international best practices. He noted that the Registrar's role is not to act as arbiter between parties (internal or external) in their corporate relationships and transactions

The Legal and Policy Framework

25. Section 8F(2) and (3) of the LPA provides as follows:

"Cancellation of limited partnership

(2) A certificate of cancellation shall, in respect of a limited partnership, specify—

(a) the name and the date of registration of the limited partnership;

(b) that the limited partnership is dissolved or that there are no limited partners, as the case may be; and

(c) the effective date of the cancellation (which shall be a date certain) if cancellation is not to be effective upon registration of the certificate by the Registrar under subsection (4).

(3) A certificate of cancellation shall be signed by at least one general partner."

26. Section 6 of the EPA provides as follows:

"Partnership agreement

6 The partnership agreement of an exempted partnership registered after the coming into operation of this Act shall expressly provide that the law applicable to the exempted partnership is the law of Bermuda.

[Section 6 repealed and replaced by 2009:39 s.5 effective 14 September 2009]"

27. Section 20(2) and (3) of the EPA provides as follows:

"Cancellation of exempted partnership

(2) A certificate of cancellation shall, in respect of an exempted partnership, specify—

(a) the name and date of registration of the exempted partnership;

(b) that the exempted partnership is dissolved; and

(c) the effective date of the cancellation (which shall be a date certain) if cancellation is not to be effective upon registration of the certificate by the Registrar under subsection (4).

(3) A certificate of cancellation shall be signed by at least one partner or by a person duly authorized to sign on behalf of the exempted partnership."

28. Section 22 of the EPA provides as follows:

"Establishment of register, evidence

22 (1) Subject to subsection (1A), the Registrar shall establish and maintain in such form as he shall determine, a register of exempted partnerships in which shall be registered all certificates required by this Act.

(1A) The Registrar shall, in respect of each exempted partnership registered under this section, enter in the register—

(a) the name of the exempted partnership;

(b) the certificate of registration issued pursuant to section 9(3); and

(c) the address of the registered office of the exempted partnership.

(2) The register shall be open, during office hours, to the inspection of all persons desiring to view the register.

(3) A certificate of the Registrar certifying that a certificate required by this Act to be registered by him has been so registered shall be received in all courts and in all proceedings whatsoever as evidence of the matter to which the certificate relates."

<u>Principles of Statutory Interpretation</u>

29. In *Bennion on Statutory Interpretation (8th Edition)* ("**Bennion**") [21.1] it stated "*An Act or other legislative instrument is to be read as a whole, so that an enactment within it is not treated as standing alone but is interpreted in its context as part of the instrument*".

30. In *R v Environment Secretary Ex parte Spath Home Ltd* [2001] 2 AC 349, 396, Lord Nichols stated "*Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective.*"

31. In *R (N) v Walsall Metropolitan Borough Council* [2014] PTST 1356 Leggatt J stated *"When courts are identifying the intention of Parliament, they do so assuming Parliament to be a rational and informed body pursuing the identifiable purpose of the legislation it enacts in a coherent and principled manner. That assumption shows appropriate respect for Parliament, enables Parliament most effectively to achieve its purposes and promotes the integrity of the law. ... Attributing to Parliament an error or oversight is therefore an interpretation to be adopted only as a last resort."*

32. In *Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)* [2004] 3 WLR 1383 Lord Nicholls stated *"As Lord Steyn explained in Inland Revenue Comrs v McGuckian [1997] 1 WLR 991, 999, the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose."*

33. In *Bennion* [24.5] it stated that the Court will take into account the state of the previous law and its evolution.

34. In *Bennion* and in *R v Brown* [2013] UKSC 43 at[34] Lord Kerr stated *"Bennion on Statutory Interpretation, 5th ed (2008) describes the effect of textual amendment of a statute at p 290 as follows: "... under modern practice the intention of Parliament when effecting textual amendment of an Act is usually to produce a revised text of the Act which is thereafter to be construed as a whole. Any repealed provisions are to be treated as never having been there, so far as concerns the application of the amended Act for the future.""*

35. In *Bennion* [26.3] and *Regina v Central Valuation officer and Another* [2003] UKHL 20, [117] Lord Millett stated *"But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it."*

Case Law on Illegality

36. In the case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 Lord Diplock stated *"By illegality … I mean that the decision-maker must understand correctly the law that regulates his decision-making power and give effect to it."*

37. In *De Smiths Judicial Review 8th Edition 2018*, para 5-001 to 5-003, it states:

    "An administrative decision or other exercise of a public function is unlawful under the broad chapter of "illegality" if the decision maker:

    (a) misinterprets a legal instrument relevant to the function being performed;

    (b) has no legal authority to make the decision;

    (c) fails to fulfill a legal duty;

    (d) exercises discretionary power for an extraneous purpose;

    (e) takes into account irrelevant considerations or fails to take account of relevant considerations; and

    (f) improperly delegates decision-making power.

    The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The instrument will normally be a statute or delegated legislation, but it may also be an enunciated policy, and sometimes a prerogative or other common law power. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the "four corners" of their powers or duties. They are also acting as guardians of Parliament's will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of Parliament's enactments.

At first sight this ground of review seems a fairly straightforward exercise of statutory interpretation, for which courts are well suited. It is for them to determine whether an authority has made an error of law. Yet there are a number of issues that arise in public law that make the courts' task more complex."

Case Law on Irrationality

38. *De Smith* expressed the relevant essential principle of irrationality as follows:

    "*Although the terms irrationality and unreasonableness are these days often used interchangeably, irrationality is only one facet of unreasonableness. A decision is irrational in the strict sense of that term if it is unreasoned; if it is lacking ostensible logic or comprehensible justification. Instances of irrational decisions include those made in an arbitrary fashion, perhaps "by spinning a coin or consulting an astrologer". In such cases claimant does not have to prove that the decision was "so bizarre that its author must have been temporarily unhinged", but merely that the decision simply fails to "add up—in which, in other words, there is an error of reasoning which robs the decision of logic".*"

39. In respect of unreasonableness, in *Coxon et Al v The Minister of Finance et Al* [2007] Bda LR 78 at 23, Nazareth JA stated:

    "Accordingly, we do not have to adumbrate and address the detailed and lengthy submissions replete with copious authorities contending for a desired formulation of irrationality or Wednesbury unreasonableness. It suffices to outline that formulation, which is to the effect that a decision would be Wednesbury unreasonable if it disclosed an error of reasoning which robbed the decision of its logical integrity; if such an error could be shown then it was not necessary for the applicant to demonstrate that the decision maker was "temporarily unhinged (R – v- Parliamentary Commissioner for the Administration ex. P Balchin [1998] 1 PLR 1). Put another way, irrationality and Wednesbury unreasonableness encompass flawed logic."

40. In the Court of Appeal case of *Dr. G. Tucker v the Public Service Commission and the Board of Education* [2020] CA (Bda) 12 Civ at [40] Smellie JA referred to the submissions of counsel on irrationality as follows: *"...relying here, inter alia, upon the dictum of Laws LJ from R (on the application of Mahmood) v Secretary of State for the Home Department: "If the decision does not add up, if there is an error of reasoning which robs the decision of logic, if the facts are not logically capable of sustaining the findings and the decision based upon them, then it cannot be said that a rational mind has been brought to bear and the decision must therefore be irrational".*

41. In respect of the formulation of the test for irrationality in the judicial review context, in the Privy Council case of *HMB Holdings Ltd. V Antigua and Barbuda* [2007] UKPC 34 at 31 the Court stated *"The test of irrationality will be satisfied if it can be shown that it was one which no sensible person who had applied his mind to the question to be decided could have arrived at."*

42. In *Tameside Secretary of State for Education and Science v. Tameside Metropolitan Borough Council* [1977] AC 1014, 1065B Lord Diplock stated "*the question for the courts is, did the [decision maker] ask himself the right question and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly*".

43. In *R (RP) v Brent London Brough Council* [2011] EWHC 3251 (Admin) at [239] Stadlen J described the *Tameside* duty as "*a requirement of general application to all relevant decision makers and a necessary condition for a decision to be characterised as lawful*".

The Grounds of Illegality and Irrationality

The Applicants' Case

44. Mr. Williams submitted that the Registrar must conduct himself in accordance with the relevant legislation and the general law and must give effect to them. He relied on the case of *Council of Civil Service Unions v Minister for the Civil Service.*

45. Mr. Williams submitted several reasons to support the Applicant's grounds. First he submitted that RPLP is an exempted limited partnership with irrevocable separate legal personality. Thus, it is entirely a creature of statute. RPLP was brought into existence by a combination of the application of section 13D of the EPA, 4A of the PA and 132N of the CA.

46. Second he referred to the conversion of RP Company to RPLP. He argued that section 6 of EPA requires that a partnership agreement must expressly provide that the law applicable to the exempted partnership agreement is the law of Bermuda. Therefore it is necessary either for the BMA or the Registrar to have a copy of the Partnership Agreement in order to ensure, before consent, and before registration that the agreement conforms to the requirements of the EPA.

47. Third, Mr. Williams submitted that pursuant to section 4A of the PA, RPLP elected at conversion that the partnership would have a legal personality. This was set out on RPLP's certificate of exempted partnership. Therefore as a limited partnership, RPLP consists of general and limited partners with limited liability pursuant to section 2 of the LPA and under that Act is governed by the PA. Thus the general partner in a limited partnership is more akin to a managing director than to an ordinary partner on equal terms with his other partners. Thus, strict duties to act in good faith in the interests of the limited partnership and to account to the limited partners for its management, both at law and in equity, are imposed on the general partner by section 8C (8) and (9) of the LPA. Without such duties, limited partners would have no means of understanding the progress of their investments or making decisions in relation to them.

48. Fourth, Mr. Williams referred to the conversion process under section 132N of the CA. He argued that as a creation of statute, so too by statute must an exempted limited partnership be terminated. He referred to section 8F of the LPA and section 20 of the EPA. He argued that subsection 8F(1) sets out the conditions which must obtain for cancellation to take place, which are that consequent on the dissolution of the limited partnership, the winding

up of the affairs of the partnership must have commenced. If those conditions are met, then there can be a certificate of cancellation setting out certain matters, including, that the limited partnership is dissolved and the effective date of cancellation. The certificate of cancellation can then be delivered to the Registrar by the general partners, within 30 days after the occurrence of dissolution and the commencement of winding up and the certificate can, in those circumstances, then be registered by the Registrar. He stressed that the Registrar has no jurisdiction to register in any other circumstances. Further, he argued that the Registrar has both an implied common law duty and an express statutory duty to investigate whether those circumstances obtain before registration.

49. Mr. Williams developed his argument along the line that the conditions are met if the provisions of the Partnership Agreement relating to dissolution are complied with. He referred to the relevant provisions of the Partnership Agreement (sections 1.5, 4.1, 4.2, 5.1, 10.1, 10.2 and 10.3). Mr. Williams submitted that the usual principles of contractual interpretation apply in relation to the interpretation of the Partnership Agreement. He relied on the UK Supreme Court case of *Arnold v Britton* [2015] 2 WLR 1593 where Lord Neuberger stated that "*When interpreting a written contract, the Court is concerned to identify the intention of the parties by reference to what 'a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean'* ..." He also cited Lord Hodge in the same case who, having pointed out that interpretation is a unitary exercise, stated "*This unitary exercise involves an iterative process by which each of the rival meanings is checked against the provisions of the contract and its commercial consequences are investigated:* ..." Thus, applying those principles, the cited clauses have the following effect:

a. Termination requires, (i) dissolution by expiry of term; (ii) a winding up process which, it is contemplated, may take some time; (iii) satisfaction of liabilities and distribution of assets in cash or kind under section 5.1; and then (iv) filing of the necessary certificate of cancellation. Mr. Williams argued that if the term is not expired then the partnership is not dissolved and its affairs are not to be wound up. Further, the effective date of cancellation cannot be prior to the effective date of

distribution as then termination would precede distribution, contrary to logic and commonsense as there would be no partnership in existence, the assets of which were available for distribution.

b. The General Partner's capacity to advance the expiry of the term requires that he make a decision in good faith and on reasonable grounds that changes in economic conditions or governing law make it impossible for the partnership to achieve its investment objectives.

c. This power is part of the General Partners management powers and is therefore subject to the limitations in the Partnership Agreement. The General Partner is akin to a managing director, and as such any failure to comply with those limitations will mean that the purported exercise of the power is ineffective. H relied on *Morse & Braithwaite: Partnership and LLP Law, Ninth Edition 2020* that where a decision maker makes a decision which he has no capacity to make because it falls outside the scope of power, or was made for improper purposes or in bad faith, the decision is treated as void.

d. It is a power which can be exercised if the General Partner deems it necessary or desirable under section 4.2 in furtherance of the purposes of the Partnership under applicable law and must be so exercised in the best interests of the partnership.

e. In exercising the power, the General Partner must comply with sections 8C(8) and (9) which require that it be exercised in good faith and in the best interest of the Partnership. That good faith has the following relevant basic aspects:

    i. An obligation to be honest, but a partner may be in breach of the good faith obligation without being dishonest or negligent, for example if he acts for an improper motive;

    ii. A requirement of openness, so that he must conceal nothing from his partners which is relevant to the firm's business; and

    iii. A requirement of loyalty, so that he must act in favour of the firm as a whole and must not exercise for his own advantage the powers which he holds as a partner only, or put himself in a position which militates against discharge of his duty to the firm.

The Registrar did not enquire

50. Fifth, Mr. Williams submitted that a kind of decision which does not *"add up"* is a decision which is not firmly rooted in and supported by proper evidence, with proper findings of fact, made after proper enquiry. A decision is therefore considered to be unreasonable or irrational if it is arrived at without reasonable steps having been taken by the decision-maker to acquaint himself with the relevant information. This is the duty of proper enquiry, which includes a duty to properly consider and grapple with all relevant material. He relied on the case of *Tameside Secretary of State for Education and Science v. Tameside Metropolitan Borough Council.*

51. Mr. Williams argued that the Registrar was by law required to investigate in accordance with his common law and statutory duties of proper enquiry. He argued that the Registrar should have asked himself whether the dissolution stated in the Certificates received by him was in accordance with the Partnership Agreement, section 5.1 of which is relied upon in the certificates. That would have led to the question whether the advancement of the expiry date had been achieved within the Partnership Agreement or extra contractually and whether there had been a reasonable decision in good faith to advance the date. He noted that Sir Paul's evidence was that the Registrar did not ask or answer those questions, he did not even have or request a copy of the Partnership Agreement. Thus, the Registrar was in breach of both duties of proper enquiry, the common law duty and the statutory duty. On that basis alone, the Decisions are irrational and unlawful.

The Partnership was not dissolved

52. Sixth, Mr. Williams submitted that the Decisions are also illegal because, on the facts of the case, RPLP was not dissolved, or wound up, its assets were not distributed and it had not been terminated at the time of the Certificates, the purported registration of the Certificates and the issuance of the Certificate of Deposit. Thus, the circumstances necessary to trigger the Registrar's jurisdiction to act under the relevant sections did not obtain at the relevant time, and the Decisions and the Certificates giving effect to them are illegal and unlawful, thus they are nullities and should be quashed.

The date of expiry was not properly advanced

(i) *Economic circumstances did not make it impossible for investment objectives to be met*

53. Seventh, Mr. Williams submitted that the date of the expiry was not properly advanced as economic circumstances did not make it impossible for investment objectives to be met. If it was not, then there was no dissolution of the partnership and no proper commencement of the winding up consequent on dissolution which are the conditions which must be met in order to trigger the Registrar's jurisdiction under section 8f(1) of the LPA. He noted that the first time the Applicants were informed of the General Partner's decision in this regard was by Conyer's letter of 26 June 2020 where it was stated that the General Partner had decided that the current economic circumstances made the investment objectives of the partnership unlikely to be met. In a letter to the investors, the General Partner used the language that it was 'difficult to see how the objectives of the partnership can be met". Mr. Williams argued that at no time did the General Partner assert that he had decided that economic circumstances precluded those objectives from being met, as is the contractual test. Thus, on this basis alone, the date of expiry was not contractually advanced, the exercise of the power was accordingly ineffective, there was therefore no dissolution and it follows the statutory conditions were not satisfied.

(ii) *The decision was not made on reasonable grounds and in good faith*

54. Eighth, Mr. Williams submitted that the conduct of the General Partner and its alter ego Mr. Yan was improper, namely to stymie the Applicants' efforts to obtain information by means of the Breach Proceedings. He referred to Sir Paul's affidavit in support for a detailed account of the facts before the creation of RPLP, and during and after its existence. Complaint was made of unanswered repeated requests for information and non-communication. Complaint was also made of the various steps taken to advance the termination date of RPLP. Mr. Williams argued that the true motivation became apparent on 1 and 3 July when investor letters were posted to RPLP's website when the General

Partner accused Sir Paul of breaching confidentiality, referred to his threatened litigation, then said it was difficult to see how investment objectives could be met and the General Partner had decided to terminate the Partnership. There was reference to a flurry of correspondence between the parties in late June to early July and the writ for the Breach Proceedings were filed on 1 July 2020. Mr. Williams referred to the hearings in the Breach Proceedings and argued that at the third hearing on 5 August 2020 the Court was informed that that the General Partner had filed the Certificates on 26 June 2020, they had been registered on 29 June 2020 and the Certificates of Deposit had been issued on 3 July 2020. He submitted that the Learned Chief Judge commented that the Court could take no further action in the Breach Proceedings in light of the Decisions, the registration of the Certificates and the issuance of the Certificate of Deposit.

55. Thus, Mr. Williams argued that the General Partner's decision was made in breach of the duty of good faith, which requires openness, honesty and loyalty. Further, no reasoned grounds for determining such a deterioration in economic circumstances were supplied, and in the absence of any reasons, and given the suddenness of the decision and the surrounding circumstances, it can only be inferred that none existed or exist. He argues that the Applicants were not aware of any.

(iii) *<u>The date of expiry was not properly advanced - Braganza</u>*

56. Mr. Williams submitted that it was trite law that a power must be exercised for the purpose for which it was granted, rather than some collateral purpose. He also submitted that where an agreement confers a discretion, at least one which calls for an assessment of facts and an exercise of judgment, certain limitations on the exercise of that discretion will be implied. He referred to *Socimer International Bank Ltd (in liquidation) v Standard Bank London Ltd* [2008] Bus LR 1304 where Rix LJ stated:

> *"… a decision-maker's discretion will be limited, as a matter of necessary implication, by concepts of honesty, good faith, and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality. The concern is that the discretion should not be abused. Reasonableness and*

unreasonableness are also concepts deployed in this context, but only in the sense analogous to Wednesbury unreasonableness … ”

57. Mr. Williams also submitted that constraints imposed by the court on the decision-making process may focus not just on the state of mind and intentions of the decision-maker, but also on an objective consideration of the process of decision-making, if not its outcome. He referred to the case of *Braganza v BP Shipping Ltd* [2015] 4 All ER 639 where Lady Hale DP stated:

    "*There is an obvious parallel between cases where a contract assigns a decision-making function to one of the parties and cases where a statute (or the royal prerogative) assigns a decision-making function to a public authority. In neither case is the court the primary decision-maker. The primary decision-maker is the contracting party or the public authority. It is right, therefore, that the standard of review generally adopted by the courts to the decisions of a contracting party should be no more demanding than the standard of review adopted in the judicial review of administrative action.*"

58. Mr. Williams submitted thus that the decision to advance the date called for justification and as none was given, it can properly be inferred, under the *Braganza* principles that there were no proper reasons and the decision was therefore irrational in the *Braganza* sense. The decision to advance the date of expiry, it is submitted, was also ineffective on this basis also, with the same result, namely, that there was no dissolution and the statutory conditions were not satisfied.

<u>The effective date of cancellation cannot be prior to the effective date of distribution</u>

59. Mr. Williams submitted that another requirement for a proper termination under the contract is that the effective date of cancellation postdate the date of distribution. However, the purported date of distribution of assets took place on 2 July 2020 which was after the filing of Certificates on 26 June 2020 and their registration on 29 June 20202. He argued that no distribution had taken place at that time and accordingly the effective date of cancellation and therefore termination could not have been 26 June 2020 as required by the

Agreement and the legislation and thus the Certificates and their registration are bad on their face for that reason.

60. Further, Mr. Williams argued that the distribution had still not taken place thus the Certificates are bad on their face for that reason as are the Decisions. Thus, it follows that the statutory and contractual conditions for dissolution not having been met at the relevant time, or at all, the Decisions are illegal and unlawful for these reasons as well.

Consequences

61. Mr. Williams submitted that the Decisions are *ultra vires* nullities on the grounds of illegality and irrationality. In reference to the consequences of *ultra vires* he referred to the leading text of *Judicial Remedies in Public Law*, Fifth Edition 2015, Sir Clive Lewis, paragraphs 5-006 to 5-007 where he stated as follows:

> "*For remedial purposes, the orthodox view is that an ultra vires act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of producing legal effects. Once its illegality is established, and if the courts are prepared to grant a remedy, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as incapable of ever having produced legal effects. A court will grant a quashing order to quash the decision and deprive the decision of all legal effect, or achieve the same result by granting a declaration that the decision is invalid, null and void, ultra vires or some combination of these phrases.*
>
> *The weight of authority is to the effect that once the court decides to grant a remedy in judicial review proceedings, the effect of that remedy is to establish that the administrative act or measure is void and incapable of ever having produced legal effects.*"

62. Mr. Williams also submitted that the same text set out that remedies in judicial review are discretionary and thus if the impact of nullification on third parties who relied on the validity of an action to their detriment is too draconian or to unravel the consequences of

invalid acts would create too heavy a burden on the administration, the Court may in its discretion refuse a remedy. However, he submitted that in this case, the absence of a conclusive evidence provision, the retrospective nullification of the Decisions and Certificates ought not to deter the Court from acting, as there are no obvious draconian effects on third parties.

<u>The Respondent's Case</u>

63. The Respondent submitted that the issue before the Court in these judicial review proceedings is one of statutory interpretation and is whether, on a proper interpretation of section 20 of the EPA and section 8F of the LPA, the Registrar had an obligation to determine that a condition triggering the delivery of the Certificates of Cancellation in section 20(1) of the EPA and 8F(1) of the LPA obtained prior to registering the Certificates of Cancellation and issuing the Certificate of Deposit.

64. Mr. Duncan submitted that the Applicants have fundamentally misconstrued section 20 of the EPA by seeking to expand the Registrar's simple but mandatory statutory duty to register a certificate of cancellation upon delivery. He argued that such an expansion should be rejected for several reasons. First, there is nothing in the wording of section 20 or elsewhere in the EPA to suggest that the certificate of cancellation required under section 20 is an application for permissions for the exempted partnership to be cancelled; or that cancellation requires the Registrar's consent or approval; or that there is any discretion whatsoever on the Registrar to go behind the certificate of cancellation; or that there is a duty imposed on the Registrar to ensure preconditions are met. The preconditions in section 20(1) of the EPA are a trigger for the exempted partnership's statutory duty to deliver a certificate of cancellation to the Registrar. A failure to deliver a certificate of cancellation or to sign a certificate of cancellation is a criminal offence under section 21 of the EPA.

65. Second, Mr. Duncan submitted that on a plain reading of section 20 of the EPA, the only duty imposed on the Registrar is to register the certificate of cancellation upon receipt. This statutory duty is administrative, not supervisory or quasi-judicial and there is no basis, upon

receiving a certificate of cancellation that complies with section 20(2) for the Registrar to refuse to register the certificate of cancellation. If Parliament had intended for the Registrar to verify the substance of every certificate of cancellation it would have provided for that in clear terms. Mr. Duncan compared section 20 to section 20A where the Minister may at any time revoke a certificate under certain circumstances.

66. Third, Mr. Duncan submitted that the Registrar's duty to register certificates under section 9 and 20 of the EPA has to be seen in the context of the Registrar's duty to establish and maintain a register of exempted partnerships under section 22 of the EPA. He argued that the Registrar has a statutory duty to establish and maintain a register of exempted partnerships in which he must register "*all certificates required by this act*". That register has to be made available to the public for inspection, thus informing the public of the status of exempted partnerships, as determined by the certificates required by the Act that have been delivered to the Registrar. Thus, section 9 and 20 should be interpreted as forming a part of the Registrar's duty to maintain the register rather than exercising any supervisory jurisdiction or "quasi-judicial" function over partnerships.

67. Fourth, Mr. Duncan submitted that on the plain words of section 20 and the EPA as a whole, it is neither the Registrar nor registration of a certificate of cancellation by the Registrar that in fact cancels the exempted partnership. Section 20(2)(c) of the EPA allows the exempted partnership to specify "*the effective date of the cancellation*" in the certificate of cancellation. The effective date of cancellation specified in the Certificate of Cancellation is 26 June 2020 and not the date of registration. Mr. Duncan argued that it follows that Parliament would not have intended any investigation by the Registrar since he has no role in the actual cancellation of the exempted partnership. On a proper interpretation of section 20(2)(c), the exempted partnership is cancelled either on the general partner signing the certificate of cancellation with a specified date, or at the latest on delivery of such a certificate of cancellation to the Registrar, not the date of registration.

68. Mr. Duncan referred to the Breach Proceedings where the Chief Justice stated that he had "*no basis for directing the Registrar to ignore the documents that have been filed*". He

argued that the Chief Justice was clearly emphasizing the signing or delivery of the Certificates of Cancellation and not the registration of the Certificates of Cancellation or the issuance of the Certificate of Deposit.

69. Fifth, Mr. Duncan argued that the suggestion that sections 9 and 20(1) require the Registrar to consider terms of the Partnership Agreement before registering the respective certificates is misconceived. He argued that prior to 2009 a partnership was required to provide a copy of the partnership agreement but that was repealed in 2009. Thus, a partnership no longer has to provide a copy of the partnership agreement and the Registrar has no jurisdiction to demand a copy of a partnership agreement under the EPA. Thus, the EPA has to be interpreted as a whole and repealed provisions are to be treated as having never been there. Thus it was inconceivable that Parliament would intend for the Registrar to consider a partnership agreement but then specifically remove the requirement for that partnership agreement to be provided to the Registrar. Mr. Duncan submitted that on a proper interpretation, section 20 of the EPA imposes a statutory duty on the relevant general partner of an exempted partnership to assess whether there has been a dissolution of the exempted partnership in accordance with the law, consider whether the winding up process has commenced, and then to file a certificate of cancellation. The terms of the Partnership Agreement may be relevant to that exercise, but they were not relevant and do not impact the Registrar's statutory duty to register upon receipt the Certificates of Cancellation. Further, the Partnership Agreement does not and cannot impose further duties on the Registrar beyond those specified in the section 20 of the EPA.

70. Sixth, Mr. Duncan submitted that an interpretation of section 20 of the EPA that requires the Registrar to accept the attestation of the general partner as to the date of dissolution in the certificate of cancellation is consistent with logic and commonsense for several reasons as follows: (a) it is the commencement of the winding up of an exempted partnership on the dissolution that triggers the general's partner's duty to deliver a certificate of cancellation; (b) on dissolution, the Partnership Agreement does not fall away as the entitlement of the partners to the partnership's property is either provided for in the Partnership Agreement to be enforced by contract law or preserved by section 39 of the

PA; (c) the Certificate of Cancellation does not remove or circumvent the partner's entitlement to receive distribution in accordance with the Partnership Agreement; (d) a registered certificate of exempted partnership under section 5 of the EPA constitutes a license to engage in or carry on any trade or business in Bermuda; (e) delivery of a certificate of cancellation does not impact the Partnership Agreement and it is the means by which the general partner cancels the registered certificate, that is, informs the Registrar that it no longer requires a licence to trade or carry on business in Bermuda; (f) thus, against that backdrop, there is no reason for the Registrar to look beyond the form of the Certificates of Cancellation.

71. Seventh, Mr. Duncan submitted that Parliament has expressly provided for loss sustained by reliance on a false statement in a certificate of cancelation in section 8E of the LPA. He argued that this is highly relevant when interpreting the duty on the Registrar as had Parliament intended the Registrar to inquire into every certificate of cancelation to identify whether dissolution had occurred in law or fact, there would be no reason to provide a remedy for false statements in the certificate of cancelation as any false statement would be identified by the Registrar.

72. Eighth, Mr. Duncan submitted that the Applicants' interpretation of section 20(1) of the EPA that the Registrar must consider the Partnership Agreement upon delivery of a certificate of cancellation and before registration creates an absurd result. In the present case, the Applicant's contention means that the Registrar would be required to investigate the state of mind of the General Partner to ascertain whether the invocation of clause 1.5 of the Partnership Agreement was in good faith and the state of RPLP and its commercial context of RPLP to ascertain whether there was bona fide commercial reasons for its dissolution.

73. Ninth, Mr. Duncan submitted that the Court must consider the impracticality of the Applicants' interpretation of section 20(1) of the EPA as the Registrar would be required to carry out that level of inquiry every time a certificate of cancellation is delivered to the Registrar, a level of inquiry clearly not intended Parliament.

74. Tenth, Mr. Duncan submits that the Applicants' reliance on the Compliance Act is misconceived as the Registrar cannot be criticised for not investigating under the Compliance Act in circumstances where there was nothing to put him on notice that such an investigation is or was required under the Compliance Act. The Registrar received the Certificate of Cancellation and registered them in accordance with his statutory duty under section 20 of the EPA. Mr. Duncan argued that on a proper interpretation of the Compliance Act, any finding following an investigation cannot render the Certificate of Cancellation invalid. The Compliance Act creates a regulatory regime, which, confers on the Registrar specific powers in the event of default. Those powers do not give the Registrar authority to disregard the Certificates of Cancellation or to disregard his duty to register the Certificates of Cancellation.

75. Mr. Duncan submitted that in light of the various points raised above that the Registrar's decision to register the Certificates of Compliance and to issue the Certificate of Deposit cannot be said to amount to illegality. Further, relying on the Court of Appeal case of *Dr. G. Tucker v the Public Service Commission and the Board of Education* it cannot be said that there is "*an error of reasoning which robs the decision of logic*".

Analysis

76. In my view the application for judicial review fails for several reasons. First, as a starting point, I disagree with Mr. Williams' contention that in respect of the conversion of RP Company to RPLP that it was necessary for the Registrar to have a copy of the Partnership Agreement in order to ensure, before consent and registration, that the Partnership Agreement conforms to the requirements of the EPA. In my view the EPA does not impose a duty on the Registrar to take receipt of a partnership agreement. On the contrary, the EPA was amended such that a partnership agreement was no longer required to be provided to the Registrar.

77. Second, I disagree with Mr. Williams' submission that the Registrar has both an implied common law duty and an express statutory duty to investigate whether certain circumstances obtain before registration. In my view, the Registrar did not have a duty to enquire. Thus this extends to Mr. Williams' other arguments that (a) the Registrar had a duty to be in possession of the Partnership Agreement and to cross-check that all of the requirements in the Partnership Agreement were met by the General Partner before registering the Certificates of Cancellation; (b) the Partnership was not dissolved; and (c) the date of expiry was not properly advanced.

78. Third, I agree with Mr. Duncan's opening shot that the Applicants have fundamentally misconstrued section 20 of the EPA by seeking to expand the Registrar's simple but mandatory duty to register a certificate of cancellation upon delivery. I accept his argument that I should reject such an expansion, generally for the reasons he argued as set out above, of which some I will address as follows.

79. Fourth, in my view section 20 of the EPA cannot be interpreted to suggest that a certificate of cancellation is an application for permission or approval for an exempted partnership to be cancelled. So too, it cannot be interpreted to empower the Registrar with a discretion to go behind a certificate of cancellation. It is clear that section 20 of the EPA sets out an administrative function for the Registrar and not a supervisory or quasi-judicial function. Further, I agree that if Parliament had intended for the Registrar to have such powers and to verify each certificate of cancellation then it would have so provided the same. I rely on *R v Environment Secretary Ex Parte Spath Home Ltd* in that statutory interpretation is an exercise which requires the Court to identify the meaning borne by the words in question in the particular context. In the present case, in my view the context is one of an administrative function.

80. Fifth, in my view, there is a significant and central reason for the registration of the certificates of cancellation in that section 22 sets out that the register must be established and maintained and it must be made available to the public for inspection. This allows the public to be informed of the status of exempted partnerships. It seems to me, applying

Barclay's Mercantile Business Finance Ltd v Mawson (Inspector of Taxes) to give effect to the purpose of the section, that Parliament intended for the public to have access to the status of exempted partnerships.

81. Sixth, it is difficult to comprehend the Applicants' arguments that the Registrar had a duty to enquire and be satisfied that a number of preconditions were met in order to deliver the Certificates of Cancellation. Such an inquiry would involve the Registrar firstly dealing with the General Partner, reviewing and cross-checking the Partnership Agreement with the actual circumstances, determining if there is a shortfall in any requirements, cross-checking with the other partners and most likely having to resolve or otherwise determine internals matters of dispute between the partners. An idea of what this entails can be garnered from Mr. Williams' very arguments about whether the date of expiry was properly advanced or not. This would have required a detailed analysis by the Registrar of the economic circumstances, whether they made it impossible for investment objectives to be met, whether the decisions were made on reasonable grounds and in good faith, whether the General Partner complied with the *Braganza* principles or whether the General Partner exercised his powers for the purpose of which it was granted. In my view, on a plain reading of section 20 of the EPA, the statutory scheme was not set up for such quasi-judicial purposes or for the Registrar to impose his own views over the partnership's views, the General Partner's views or a partner's views. On the contrary, it is plain that it was set up for the Registrar to receive the Certificates of Cancellation, to not go behind them and to then register them accordingly for availability to the public.

82. Seventh, as I stated above, there is no longer a requirement for a partnership agreement to be provided to the Registrar. Thus, I agree with Mr. Duncan that it is inconceivable that Parliament would intend for the Registrar to consider a partnership agreement having specifically removed the need for that partnership agreement to be provided to the Registrar. One can easily envisage the Registrar requesting a copy of a partnership agreement in order to conduct an analysis per Mr. Williams' arguments only to be rebuffed by a partnership taking the stance that they were statutorily not required to provide one. To

my mind, applying *Regina v Central Valuation Office and Another*, Parliament would not have intended such a set of unreasonable circumstances.

83. Eighth, I disagree with Mr. Williams' line of arguments in respect of a requirement for a proper termination under the contract is that: (a) the effective date of cancellation must postdate the date of distribution; and (b) thus the Certificates are bad on their face as the distribution had still not taken place. On the contrary, I agree with Mr. Duncan's submissions that a proper interpretation of section 20 of the EPA that requires the Registrar to accept the attestation of the general partner as to the date of dissolution in the certificate of cancellation is consistent with logic and commonsense. In short, the Partnership does not fall away and the obligations between the partners remain and the obligations in respect of the Registrar must be complied with. To my mind, there is no requirement or reason for the Registrar to look beyond the Certificates of Cancellation.

84. Ninth, I have given consideration to the practical aspects of a Registrar having to review every partnership agreement and then cross-checking it to verify whether it is proper to deliver Certificates of Cancellation to the Registrar. The Registrar exhibited an email from Ms. Memari to Ms. Tornari where Ms. Memari indicated that during the Covid-19 pandemic the Registrar operated as best as it could, continuing to experience thousands of filings and requests which were accommodated electronically. I took this to mean that some of those transactions were in respect of exempted and limited partnerships. In my view, if Parliament had intended for such level of scrutiny for the volume of transactions handled by the Registrar, then it would have expressly set out such a process.

85. Tenth, in my view, I agree with Mr. Duncan that the Registrar cannot be criticised for not investigating under the Compliance Act when there were no circumstances to put him on notice that such an investigation was warranted. It seems illogical that every time a certificate of cancellation is delivered to the Registrar, the Registrar should launch an investigation using the powers of the Compliance Act. I accept the Registrar's evidence that the Compliance Act was brought into force to expand the Registrar's power to monitor compliance with the statutory requirements by registered entities through inspection and

enforcement so Bermuda was compliant with international best practices. To my mind, there is an ocean of difference between a regular transaction with the Registrar and the Registrar deploying his powers of inspection and enforcement. Thus, I find no merit in the Applicants' arguments in relation to the Compliance Act.

86. Eleventh, in light of the reasons set out above, I am of the view that the Applicants have failed to satisfy me that the Decisions are illegal. On the contrary, applying *Council of Civil Service Unions v Minister for the Civil Service*, I am satisfied that the Registrar understood correctly the law that regulated his decision making power and gave effect to it. Further, in applying the extract from *De Smiths Judicial Review 8th Edition 2018*, I am satisfied that the Registrar did not stray into any of the territory that underscores an unlawful exercise of his powers in making the Decisions. On the contrary, I am of the view that the Registrar acted within the "*four corners*" of his powers and duties.

87. Twelfth, in light of the reasons set out above, I am of the view that the Applicants have failed to satisfy me that the Decisions are irrational. In applying *De Smith*, the Decisions are not unreasoned, and do not lack ostensible logic or comprehensible justification. So too, in applying *Dr. G Tucker v the Public Service Commission and the Board of Education*, I am not satisfied that the Registrar's Decision does not add up or that there is an error of reasoning which robs the decision of logic. Also, in applying *Tameside Secretary of State for Education and Science v Tameside Metropolitan Borough Council*, I am of the view that the Registrar did ask himself the right question and took reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly.

Conclusion

88. In light of the above reasons, I find that the Respondent's Decisions were not illegal and not irrational. Thus, the application by the Applicants for the relief sought is denied.

89. Unless either party files a Form 31TC within 7 days of the date of this Ruling to be heard on the subject of costs and/or damages, I direct that costs shall follow the event in favour of the Respondent on a standard basis, to be taxed by the Registrar if not agreed.

Dated 31 August 2022

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HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT