COLLAS CRILL

TAX v FDQ BVIHCMMAP2024/0029

NOVEMBER 2025

Court: Eastern Caribbean Court of Appeal
Subject: BVI Arbitration Act, interim injunction to restrain arbitration; whether it is just and convenient to grant interim injunctive relief to restrain the respondents from pursuing second arbitration proceedings while an appeal is pending, whether to revoke order of the justice of appeal declaring that a single judge of the Court does not have jurisdiction to grant the interim injunction sought, Court of Appeal's supervisory jurisdiction over arbitration, relevant factors governing grant of injunction pending appeals, anti-suit arbitration injunction
Judges: Hon. Mde. Esco L Henry, Hon. Mr Reginald Armour, Hon. Gertel Thom

Summary

This BVI Court of Appeal decision considers and applies relevant law on when the Court will grant an interim injunction to restrain a second arbitration pending appeals arising from a first arbitration seated in the BVI.

Further details

Procedural background – The parties' 2018 Licence Agreement contained a BVI-seated arbitration clause. The applicant commenced arbitration in 2021. Following an 18-day hearing, the sole arbitrator issued a Final Award in the applicant's favour in February 2023. On 23 March 2023, the respondent filed a Fixed Date Clain Form challenging the award by way of appeal and alleging serious irregularity and public policy concern. By judgment dated 25 June 2024, the Final Award was set aside in full, the High Court finding that the respondent's complaints of serious irregularity and errors of law justified the same. The High Court also stated that this will 'give the parties an opportunity to refer their disputes to a differently constituted Tribunal if they so wish'. The applicant obtained leave to appeal that decision in October 2023. That appeal also remained pending.

The respondent commenced a second, identical arbitration (notice served 21 July 2025), prompting the injunction application that was the subject of this Court of Appeal decision. The parties acknowledged that the second arbitration proceedings would seek to determine similar legal issues to those which arise in the appeal against the setting aside order.

Relevant law – Section 24(1) of the Eastern Caribbean Supreme Court (Virgin Islands) Act enables the Court, in the exercise of its equitable jurisdiction and discretion, to grant interim injunctive relief if satisfied that it is just or convenient to do so.

Every arbitral order must have a seat that anchors it to a particular national legal system. That dictates the legal system which is empowered to exercise supervisory jurisdiction over the arbitration. The corollary is that

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the court of the seat of the arbitration would necessarily be endowed with greater control and greater powers of intervention over an arbitration within its jurisdiction than one in a foreign jurisdiction: *Naviera Amazonica Peruana*. Further, the Court retains the power to prevent abuse of process in the conduct of court or arbitral proceedings. It would exercise those powers of control only if necessary, and would do so judicially, not to interfere with an arbitration, but rather to restrain a party from abusing the process of the court or the arbitral tribunal or using either forum in an oppressive or unconscionable manner. It matters not whether the arbitration is domestic or foreign: *Sonera*.

As with foreign arbitration proceedings, the Court has jurisdiction to grant injunctive relief to restrain a party from pursuing domestic arbitration proceedings but will do so only in exceptional cases. Exceptional circumstances exist if the applicant's legal or equitable rights have been infringed or threatened by a continuation of the arbitration, or its continuation will be vexatious, oppressive or unconscionable: *Elektrim*.

Application – There were two pending appeals before the BVI Court in relation to the first arbitration proceedings, with the issues to be determined on appeal being similar to some of the issues that would arise in the second arbitration proceedings.

By executing the arbitration agreement, the parties agreed that the BVI was the seat of the arbitration and that the BVI Arbitration Act is applicable. Therefore, they submitted to all stages of the arbitration process including any appeals that may be pursued. The appeal process was an integral part of the first arbitration proceedings to which the parties had bound themselves by the arbitration agreement. Obviously, the first arbitration proceedings would be concluded only when the pending appeals were finally determined.

Therefore, by attempting to pursue the second arbitration proceedings while the first was still in train, the respondent had taken action which would engage the parties in simultaneous, parallel judicial inquiries about identical and similar factual and legal issues. This would involve duplication of efforts, expenditure and resources contrary to the Overriding Objective. More fundamentally, this was manifestly abusive of the process of the court and in all of the circumstances is unconscionable.

Therefore, it was just and proper to grant the interim injunctive relief on the provision of an undertaking in damages sought by the applicant.

The Court was also satisfied that any prejudice occasioned to the respondent could be addressed by issuing appropriate directions to expedite the hearing of the appeals and appropriate costs orders.

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