

IN THE COURT OF APPEAL OF BELIZE A.D. 2026

CIVIL APPLICATION NO. 19 OF 2025

BETWEEN:

MICHAEL FEINSTEIN

Applicant

and

ATLANTIC BANK LIMITED

1st Respondent

OPERACIONES PORTURIAS SA de CV

2nd Respondent

STAKE BANK ENTERPRISE LIMITED

3rd Respondent

Before:

The Hon. Mme. Louise Esther Blenman
The Hon. Mme. Sandra Minott-Phillips KC
The Hon. Mme. Michelle Arana

Chief Justice
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Richard Slater, KC and Mr. Bryan Neal for the Applicant
Mr. Eamon Courtenay, SC and Ms. Iliana Swift for the 1st and 2nd Respondents
Rt. Hon. Dean Barrow, SC and Ms. Agassi Finnegan for the 3rd Respondent

2026: March 11
April 24

Catchwords

Renewal of application for leave to appeal following refusal by single judge of appeal – Basis for interference with discretion of Case Management judge – Proposed appeal of order refusing leave to amend and to file additional witness statements – Civil Procedure Rules, Part 1, Part 11, Part 20 – Effect of delay – threat to existing trial dates – prejudice not invariably addressed by orders for costs of an adjournment.

DECISION

INTRODUCTION

[1] **BLENNAN, C.J.:** This is an interlocutory application by Mr. Michael Feinstein (“Mr. Feinstein”) by way of Renewed Motion for Leave to Appeal the orders of the Honourable Mr. Justice Rajiv Goonetilleke made on 24th October 2025 in **Claim No. 188 of 2024 – Atlantic Bank Limited and Operaciones Portuarias S.A. D.E. C.V. v Michael Feinstein and Stake Bank Enterprise Limited** - together with an application for a stay of proceedings in the court below. The underlying application in the court below was an application by Mr. Feinstein to re-amend his Defences and to file a further Witness Statement of Michael Feinstein and a Witness Statement of Melita Feinstein.

Application in Court Below and Decision

[2] The application was heard by the Honourable Mr. Justice Rajiv Goonetilleke on 24th October 2025, and the learned judge in a written judgment dated the same date, refused the application and struck it out.¹ Indeed, by order dated 24th October 2025, the judge ordered that:

- a. The Application of the 1st Defendant to amend the pleadings and to file additional witness statements is refused and struck out.
- b. The 1st Defendant shall pay the costs of the other parties, for the hearing today.
- c. The costs are to be agreed or assessed.
- d. Trial of this matter will take place on the 29th, 30th and 31st of October 2025, as scheduled.

¹ Atlantic Bank Limited and another v Michael Feinstein and another - Claim No. AP 188 of 2024.

Leave to Appeal

- [3] Thereafter, Mr. Feinstein sought leave to appeal the orders of Goonetilleke J before a single judge of the Court of Appeal. That application was heard by the Honourable Mme. President Justice Minnet Hafiz-Bertram on 20th November 2025 and the Honourable President denied the stay and refused the application for leave to appeal the decision of Goonetilleke J dated 24th October 2025. She later gave her reasons in a written judgment dated 2nd February 2026.

Renewed Application to Full Court

- [4] Mr. Feinstein, being dissatisfied, filed his Renewed Motion for Leave to Appeal together with his application for a stay of proceedings on 28th November 2025. They are now before this Court.
- [5] The applications are strenuously resisted by the Respondents, Atlantic Bank Limited (hereinafter Atlantic Bank”), Operaciones Portuarias SA de CV (hereinafter “OPSA”), and Stake Bank Enterprises Limited (hereinafter “SBEL”), respectively, who contend that the trial judge acted properly in refusing Mr. Feinstein’s application to amend his pleadings and to adduce further evidence.

Background

- [6] It is important to set out the background in some detail since it is necessary to provide the requisite context.
- [7] The substantive matter to which this application relates is Claim No. 188 of 2024 wherein Atlantic Bank initiated proceedings against Mr. Feinstein and SBEL (the 1st and 2nd defendants in the court below) by way of Claim Form dated 19th April 2024. The Claim was subsequently amended on 30th May 2024 to add OPSA as the 2nd claimant.

- [8] Claim No. 188 of 2024 concerns, in large part, the project to develop Stake Bank Island as a cruise ship docking facility. Stake Bank Island, originally comprised of 16.085 acres of land, was granted to Mr. Feinstein by the Government of Belize in 2004. In 2008, Mr. Feinstein later conveyed the entire island to SBEL, a company of which he and his wife, Mrs. Feinstein, were the directors and sole shareholders. The grant and subsequent conveyance were to enable SBEL to develop Stake Bank Island into a cruise ship docking facility.
- [9] Starting in 2019, Mr. Feinstein commenced work to dredge for the purpose of creating a turn basin and reclaiming land surrounding Stake Bank Island. The reclaimed land comprised of 23.4 acres is more colloquially known as the Extension to Stake Bank Island (hereinafter “the Extension”). On 18th June 2021, Mr. Feinstein applied to the Commissioner of Lands for permission to survey the Extension and he subsequently applied for and was granted title to the Extension in his own name.
- [10] Atlantic Bank provided banking services to SBEL since August 2018, and between September 2018 and May 2021, provided SBEL with the sum of BZ\$62,000,000.00 by way of bridge financing to fund preliminary works on Stake Bank Island and the staging site, as well as to engage consultants, engineers and contractors, and later to assist with the continued development of Stake Bank Cruise Port. The total sum of BZ\$62,000,000.00 was distributed in three tranches. Each disbursement was predated by a separate Facility Letter signed by Mr. Feinstein in his capacity as director of SBEL. Atlantic Bank also provided Mr. Feinstein with a Mortgage Debenture in September 2018. However, that Mortgage Debenture remained undated and unregistered until January 2022. The Mortgage Debenture charged, among other things, all the freehold and leasehold property of SBEL both present and future and all buildings and fixtures (including trade fixtures) from time to time on such property.
- [11] Atlantic Bank alleges that it was induced to provide bridge financing because Mr. Feinstein represented that he would apply for the Extension and procure title for it in SBEL’s name and that the title would be subject to the Mortgage Debenture. Atlantic

Bank further alleges that in March 2024, it discovered that these representations were false as Mr. Feinstein had obtained title in his own name and had not communicated this when the Mortgage Debenture was dated and registered in 2022. Atlantic Bank made demand on SBEL alleging that it was in default and a receiver, Marlowe Neal, was appointed over all the income, rents and profits of all property and profits of SBEL. Atlantic Bank also demanded that Mr. Feinstein convey the Extension to SBEL to them. Later, in May 2024, OPSA purchased the loan in the sum of BZ\$62,000,000.00 from Atlantic Bank and was assigned the benefit of the Mortgage Debenture. Both Atlantic Bank and OPSA allege that Mr. Feinstein holds the Extension on trust for SBEL and that he is contractually obligated to ensure that the Extension is subject to the Mortgage Debenture.

[12] Mr. Feinstein contends that at no time did he ever represent that he would obtain title to the Extension in SBEL's name nor that the Extension would form part of the security for the monies advanced by Atlantic Bank. He contends that his failure to convey the property is not in breach of the facility letters, and counterclaims for an order invalidating the Mortgage Debenture, or alternatively, a declaration that the Mortgage Debenture is void and therefore unenforceable in so far as it fails to comply with **section 71 of the General Registry Act**,² and a further order invalidating the assignment of the Mortgage Debenture from Atlantic Bank to OPSA.

[13] It is noteworthy that Claim 188 of 2024 is just one of a series of court proceedings connected with Stake Bank Island. Notably, in Claim No. 533 of 2024, Mr. Feinstein initiated proceedings against the Minister of Natural Resources, Petroleum and Mining and the Government of Belize. That matter was decided by Goonetilleke J in favour of the Government and is now the subject of an appeal before the Court of Appeal. Similarly, Mr. Feinstein and Mrs. Feinstein, in Claim 754 of 2025, have sued Atlantic Bank, OPSA and Marlowe Neal. That matter is currently before the High Court. OPSA, in Claim 286 of 2025 has also initiated proceedings against Mr. Feinstein and Mrs.

² Cap. 327 of the Substantive Laws of Belize (Revised Edition) 2020.

Feinstein. In turn, Mr. Feinstein and Mrs. Feinstein have petitioned the court in Claim 289 of 2025.

Proceedings in the Court Below

[14] The Claim from which this application arose was originally filed on 19th April 2024 and amended on 30th May 2024. Mr. Feinstein's defence was originally filed on 20th May 2024 and his Amended Defence and Defence to OPSA's Claim were filed on 25th June 2025. The matter was case managed on 15th July 2024 and case management dates were set. The trial of the claim was fixed for 14th, 15th and 16th January 2025. These dates were twice vacated on the request of Atlantic Bank and OPSA and rescheduled, first to 28th, 29th and 30th April 2025 and then to 22nd, 23rd and 24th July 2025 due to the unavailability of one of their foreign witnesses. The trial was adjourned for a third time in July 2025 at the request of Mr. Feinstein's team. This was to facilitate the appointment of a new team of lawyers from the United Kingdom including learned King's Counsel Mr. Salter and Mr. Cholakov. The trial was adjourned to 29th, 30th and 31st October 2025.

[15] As previously indicated, the present application had its genesis in an application by Mr. Feinstein to re-amend his defences and File a Witness Statement of Michael Feinstein and a Witness Statement of Melita Feinstein. The application was filed on Friday, 17th October 2025. This was eight working days before the scheduled trial on 29th, 30th and 31st October 2025. The learned judge convened a mention hearing in the following week on Friday, 24th October 2025. This was three working days before the start of trial.

[16] At the hearing, the attorneys for the parties were present. Mr. Feinstein was represented by Mr. Rumen Cholakov, Mr. Hector Guerra and Mr. William Lindo. Mr. Eamon Courtenay, S.C. and Ms. Iliana Swift represented Atlantic Bank and OPSA. Mr. Dean Barrow, S.C. and Ms. Agassi Finnegan represented SBEL. There was considerable discussion between Mr. Cholakov, Mr. Courtenay, S.C. and Mr. Barrow, S.C. The learned judge was informed that Atlantic Bank and OPSA intended to oppose the application to amend the defences and the learned judge requested oral submissions from the parties in relation to the application. The learned judge heard from Mr.

Cholakov, Mr. Courtenay, S.C. and Mr. Barrow, S.C. Mr. Cholakov, who by then was equipped with the knowledge that Atlantic Bank and OPSA intended to oppose the application, made an oral application, for the first time, to have the trial adjourned to accommodate the application for an amendment.

[17] After hearing the parties, the learned trial judge proceeded to hear the application on paper and, in a written decision dated the same date, 24th October 2025, dismissed Mr. Feinstein's application to re-amend the pleadings and to file additional witness statements. At the outset of his decision, the learned judge set out the circumstances leading to the hearing of the application on 17th October, 2025. He went on to itemize the orders requested by Mr. Feinstein and summarized the grounds for the application. The judge noted the amendments in the re-amended defences and set out the law in relation to the procedure for amendments, and in particular, to the overriding objective under the **Senior Courts (Civil Procedure) Rule, 2025** ("CPR"), CPR 1; CPR 11 in relation to urgent applications; CPR 20 in relation to applications to amend a statement of case; and CPR 26 in relation to the court's power to shorten the time for compliance with any rule. The learned judge then contextualized the application by setting out the background with timelines and circumstances in relation to previous requests for adjournments including the fact that the matter had been adjourned on three previous occasions; twice at the request of Atlantic Bank and OPSA, and once at the request of Mr. Feinstein. The court then dismissed the application and ordered that the trial would proceed on 29th, 30th and 31st October 2025.

[18] However, on the date of the trial, the court was informed that Mr. Feinstein had filed his application for leave to appeal to a single judge and his counsel sought an adjournment on that basis. The learned trial judge, faced with this information, considered the judicial time involved, inconvenience to witnesses and parties and additional expenses if the matter were to proceed to trial and a retrial ordered. He adjourned the matter to 21st November 2025; a date following the outcome of the application to this Court for Leave to Appeal.

[19] Since then, the matter has been further adjourned to 6th to 8th July 2026 in consideration of the hearing of the renewed application for leave before this Court.

[20] It is useful to reproduce the intended grounds of appeal in Mr. Feinstein's Notice of Renewed Motion for Leave and for Stay of Proceedings Pending Appeal.

GROUND OF APPLICATION

[21] The grounds of the application are that:

1. "The client is desirous of appealing against the judgment and order, because the court below:
 - a. **Ground 1:** Misdirected itself and/or committed an error of law in the application of the test under CPR r. 20.1(3) , which directs that the Court must have regard to the factors set out therein, but the Court below failed to consider at all the factors in CPR r. 20.1(3)(b), (c), and (d), and also misdirected itself when considering the factors in CPR r. 20.1(3)(a), (e) and (f).
 - b. **Ground 2:** Misdirected itself and/or committed an error of law in the application of the overriding objective, by failing to consider or erring when considering the factors set out in CPR r. 1.1(2).
 - c. **Ground 3:** Committed procedural misconduct and/or an error of law in the application of CPR r. 11.12(1) and CPR 11.12(2) by showing the Judgment and Order without receiving a notice of opposition from the respondents pursuant to CPR r. 11.12(1) and, therefore, erred in treating the application below as opposed when it should have been considered as unopposed and granted by the Court.
 - d. **Ground 4:** Misdirected itself and/or committed an error of law in the application of CPR r. 11.15(a) and (b), because the Court Both failed to consider at all whether the application discloses reasonable grounds pursuant to CPR r. 11.15(a) and for all the reasons set out above, the application was not an abuse of the court's process pursuant to CPR r. 11.15(b).
 - e. **Ground 5:** Committed procedural misconduct by listing a mention in the case below come on without providing any notice to the parties about the nature of the hearing and what applications would be considered before the Court, but then proceeded to invite submissions from counsel on specific applications and rule on the same.

- f. **Ground 6:** For all of the above reasons, the Court below also committed an error of law in ordering the applicant to pay the costs of the hearing.”
- 2. The intended appeal has a real prospect of success on the basis of the intended grounds of appeal set out above and detailed in the First Affidavit of Michael Feinstein in support of this Notice of Motion.
- 3. There is a prima facie case that the learned judge erred in law.
- 4. It is just and proper and in the interest of good administration of justice for leave to appeal to be granted.
- 5. The applicant would suffer injustice if a stay of those proceedings is not granted, because they appeal against the Judgment refusing permission to amendment of the Applicant’s Defences and adduces new evidence is critical to the conduct of the trial of the matter. Accordingly, if the claim proceeds:
 - a. The trial of this matter is listed to take place on 29 October 2025 on the basis of the current unamended pleadings; and
 - b. if the Application and subsequent appeal of the Judgment and Order are successful the case would have to be retried and all witnesses cross-examined afresh which would lead to significant wasted costs and would prejudice all parties and their respective witnesses..”

ISSUES

[22] The issues that arise for the court to resolve may be succinctly stated as follows:

- a. Whether the Court should grant Mr. Feinstein leave to Appeal the order of Goonetilleke J dated 24th October 2025 dismissing his application to re-amend his defences and to file a further Witness Statement of Michael Feinstein and a Witness Statement of Melita Feinstein in Claim 188 of 2024.
- b. Whether the Court should grant a stay of the proceedings in Claim 188 of 2024 while Mr. Feinstein pursues an appeal of the order of Goonetilleke J dated 24th October 2025 dismissing his application to re-amend his

defences and to file a further Witness Statement of Michael Feinstein and a Witness Statement of Melita Feinstein.

SUBMISSIONS ON BEHALF OF MR. FEINSTEIN

[23] In their written submissions, Mr. Richard Salter, K.C. and Mr. Rumen Cholakov indicated that the proposed amendments to Mr. Feinstein's defences fell into two categories. The first category contains those amendments that are clarifications and corrections while the second category contains additional grounds of defence. Similarly, they submit that the evidence contained in the two witness statements was meant to amplify the evidence and support the substantive amendments in the second category. Their submissions also incorporated the intended grounds of appeal.

[24] In relation to the learned trial judge's decision, they submitted that he fell into error in treating the need for an adjournment as an overriding factor, and in so doing, he failed to comply with the requirements of CPR 20.1(3) and failed to properly carry out the balancing exercise required by that rule. In particular, they submitted that he failed to weigh separately in relation to each proposed amendment the prejudice to Mr. Feinstein caused by refusing that amendment as opposed to the prejudice that allowing the amendment would cause to Atlantic Bank and OPSA.

[25] They further submitted that to deprive Mr. Feinstein of the opportunity to put forward his best and strongest defence was a very draconian step, which could only be justified by some equivalent or greater prejudice to Atlantic Bank and OPSA. It is their contention that had he followed the structured process of evaluation, the learned judge would've come to a different conclusion in relation to the amendment application. They posited that the judge had no evidence of prejudice to Atlantic Bank and OPSA that would be brought into the balance against the obvious prejudice to Mr. Feinstein from the refusal of the application.

[26] Purporting to rely on the authority of **Groarke v Fontaine**³, **The New York Laser Clinic Limited v Naturastudios Limited**⁴ and **PJSC Tatneft v Bogolyubov**⁵ they submitted that late applications should be allowed in the interest of justice even where this means that the trial date will likely not be met.

[27] Mr. Salter, K.C. and Mr. Cholakov also submitted that the learned judge misdirected himself in the application of the overriding objective inclusive of ensuring that, as far as possible, the parties are on an equal footing. They further submitted that the learned judge misapplied the law in dealing with the application in a summary way without proper warning and that, in so doing, he disabled himself from giving any or any proper consideration to the proposed amendments and evidence individually. Particularly, they submitted that the learned judge had no authority to deal with the application on paper pursuant to CPR 11.12(2). Even if he had the authority, they submitted that he erred in the exercise of his discretion to deal with the application on paper, given the complexity of the issues presented and the need for detailed legal submissions.

[28] It is Mr. Salter's final submission that the proposed amendments raise points of law and of fact that go to the heart of the issues in dispute. Therefore, the proposed amendments should have been permitted even if this meant that there would be an adjournment.

SUBMISSIONS ON BEHALF OF ATLANTIC BANK AND OPSA

[29] In opposing Mr. Feinstein's Application for Leave to Appeal, Mr. Eamon Courtenay, S.C. and Ms. Iliana Swift, in their written submissions on behalf of Atlantic Bank and OPSA, strenuously resisted the submissions made on behalf of Mr. Feinstein. They submitted that the affidavit evidence of Mr. Feinstein was replete with legal submissions and ought to be struck out.

³ [2014] EWHC 1676 (QB).

⁴ [2014] EWCA 421 (Civ).

⁵ [2020] EWHC 623 (Comm).

[30] In relation to the application itself, they submitted that where a high court decision is a discretionary case management decision, as in the instant case, there is a high threshold for overturning such a decision. It was for Mr. Feinstein to demonstrate that he has a real prospect of meeting this high threshold that Goonetilleke J was plainly wrong and was outside the generous ambit within which reasonable disagreement is possible.

[31] Mr. Courtenay, S.C. orally argued that the learned judge conducted the required balancing exercise under CPR 20.1(3). That he had firmly in his mind the fact that a costs order was not a panacea and appreciated the impact the disruption would have on the administration of justice. He contended that, contrary to Mr. Salter's submissions, the learned judge listed all the relevant factors he was required to consider under CPR 20.1(3) and considered them in the context of the present case and that the fact that the trial would need to be adjourned was not his only nor his overriding consideration.

[32] In respect of Mr. Salter's submission that the learned judge did not conduct the balancing exercise in respect of each amendment, and that, had he done so, the clarification and correction amendments would not require an adjournment, Mr. Courtenay, S.C. orally submitted that this is an unfair criticism of the learned judge as that is not the way the application was moved by Mr. Cholakov in the court below. They quoted an exchange from the hearing transcript where Mr. Cholakov made an oral application to have the trial adjourned in respect of all the amendments.

[33] Mr. Courtenay, S.C. further submitted that the submission that the learned judge failed to follow the structured process of evaluation under CPR 20.1(3) was a "pedantic incantation" and that despite him not following the structured approach, it cannot truthfully be said that the learned judge did not consider all the factors required by CPR 20.1(3). They submitted that Mr. Feinstein had a responsibility to satisfy the court of the promptitude of the application and that his failure to specify in his evidence when he became aware of the need to re-amend reflects a deficiency in his application. In respect of prejudice to the parties, they submitted that despite the fact that Atlantic Bank and

OPSA had not filed any evidence in answer to the application, it was open to the learned judge to find on the pleadings that prejudice would be caused to them.

[34] Mr. Courtenay, S.C. and Ms. Swift directly addressed Mr. Salter K.C.'s reliance on **Groarke v Fontaine (supra)**, **The New York Laser Clinic Limited v Naturastudios Limited (supra)** and **PJSC Tatneft v Gennady Bogolyubov et al (supra)** and submitted that these were distinguishable from the case at bar. Accordingly, they were not useful. They further submitted that the learned judge appropriately considered the overriding objective and that there was no procedural misconduct by the learned judge. They further added that Mr. Salter K.C. made no submissions in respect of his application for a stay of proceedings and the court should therefore consider this aspect of the application as being abandoned.

SUBMISSIONS ON BEHALF OF STAKE BANK ENTERPRISES LIMITED

[35] Mr. Dean Barrow, S.C. and Ms. Agassi Finnegan made written submissions on behalf of SBEL. From the outset, they submitted that Mr. Feinstein's intended appeal has no real prospect of success as it can show no blatantly wrong exercise of Goonetilleke J's discretion.

[36] They also submitted that relevant factors for the learned judge's consideration included the factors under Rule 20.1(3) and that, his written decision showed a complete appreciation of these guiding principles concerning amendments and applications. Thus, the learned judge contemplated the relevant factors including the procedural history of claim 188 of 2024, the specific grounds raised by the application and the evidence supplied to the court in the supporting affidavit. Mr. Barrow, S.C. and Ms. Finnegan iterated that the learned judge's observations on the lateness of the application were appropriate. Furthermore, the judge examined the prejudice that the application could cause to Mr. Feinstein as opposed to the prejudice to the Respondents.

[37] They submitted that there is no mandatory weight to be afforded to the factors under CPR 20.1(3) and it was therefore open to the judge to afford particular weight to any factor including finding that the lateness of the application looms larger or largest. Therefore, unless this is abhorrent, an appellate court will respect it.

[38] Mr. Barrow, S.C. and Ms. Finnegan submitted that the trilogy of cases; **Groarke v Fontaine (supra)**, **The New York Laser Clinic Limited v Naturastudios Limited (supra)** and **PJSC Tatneft v Gennady Bogolyubov et al (supra)** that Mr. Salter K.C. relied on turn on their own facts and are distinguishable from the present case. If anything, they help the Respondents' contentions.

[39] In relation to Mr. Salter K.C.'s submission that the learned judge's actions were procedurally unsound in so far as he issued a judgment and order without the respondent's Notice of Opposition, Mr. Barrow, S.C. submitted that the nature of how the hearing of the application unfolded before the learned judge was in fact an attempt by the learned judge to help Mr. Feinstein by hearing the application on an urgent basis. It is this attempt to do justice that overtook the requirements under CPR 11.12. In particular, they stressed that the Court compressed the usual timeline to help Mr. Feinstein because he filed his application so late that absent the Court's leapfrogging, it would have been impossible to hear it before trial and the trial would have made the application otiose. Mr. Barrow, S.C. and Ms. Finnegan also stressed that Mr. Feinstein accepted the quick hearing as fair when it happened and took part fully in the Court's foreshortened hearing of the application. They also urged the court to consider the procedural consequence of the matter proceeding to appeal including critical questions about the long term availability of one of Atlantic Bank and OPSA's witnesses.

DISCUSSION AND ANALYSIS

Test for leave to Appeal

[40] I have given deliberate consideration to the arguments. Before addressing the arguments that were advanced, it is important that recognition be given to the fact that the leave to appeal is sought in relation to a case management order. It is in effect an application for leave to appeal against the exercise of discretion by the learned judge who declined to grant Mr. Feinstein's application.

[41] I now turn to examine the test for leave to appeal. There is an amplitude of case law, both in this jurisdiction and elsewhere, on the applicable principles that an appellate court ought to contemplate when presented with an application for leave. It is worth exploring a few of these decisions.

[42] In **Belize Telemedia Ltd v Belize Telecom Ltd et Al**,⁶ Carey JA affirmed Belize's adoption of the circumstances in which the Court of Appeal in England would grant leave as set out in the Judgment of Sosa, J (as he then was) in **Wang v Atlantic Insurance Co Ltd (unreported)**. These principles are that leave will be granted by the Court in three categories of case:

- (1) Where they see a prima facie case where an error has been made;
- (2) Where the question is one of general principle, decided for the first time;
- and
- (3) Where the question is one of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage.

⁶ Civil Appeal No. 23 of 2008.

[43] Carey JA went on to adopt **Practice Note (Court of Appeal Procedure)**⁷ by Lord Woolf, MR that addresses applications for leave to appeal from interlocutory orders. The practice Note reads as follows:

"Appeals from interlocutory orders

An interlocutory order is an order which does not entirely determine the proceedings. Where the application is for leave to appeal from an interlocutory order, additional conditions arise:

- (a) the point may not be of sufficient significance to justify the costs of an appeal;
- (b) the procedural consequences of an appeal (e.g. loss of trial date) may outweigh the significance of the interlocutory issue;
- (c) it may be more convenient to determine the point at or after the trial. In all such cases leave to appeal should be refused."

[44] In **Karina Enterprises Ltd v China Tobacco Zheijang Industrial Co Ltd.**,⁸ Hafiz Bertram, JA (as she then was) confirmed that the applicant was required to, firstly, satisfy the court that there existed a real prospect of success, then secondly, persuade the court that one or more of the three categories listed by Sosa, J applied and, thirdly, that, in the case of an interlocutory matter, none of the considerations in the Practice Note arose.

[45] In **Comodo Holdings Limited v Renaissance Ventures Limited and Joseph Katz**,⁹ the Eastern Caribbean Supreme Court held that the threshold requirement that an appellate court has to meet is to demonstrate that the appeal has a real prospect of success. As the court enunciated:

"It is the law that a court which is asked to grant permission to amend will base its decision on the overriding objective. Generally, disposing of a case justly will mean that amendments should be allowed to enable the real issues to be determined. There is a public interest in allowing a party to deploy its real case, provided it is relevant and has a real prospect of

⁷ [1999] 1 All ER 186.

⁸ Unreported judgement dated 7 November 2014.

⁹ [2015] ECSC J0521-2.

success. The court is competent to refuse to grant leave to amend the pleadings if the proposed amendments will serve no useful purpose or are fanciful.”

[46] These principles distilled in the cited cases are settled law in relation to leave applications and I endorse them.

[47] The application before the Court is one that concerns the exercise of the trial judge’s case management discretion, and in particular whether he erred in the exercise of his discretion when he refused and struck out Mr. Feinstein’s application to re-amend his defences and to have entered in evidence two witness statements. In those circumstances where the impugned decision concerns the trial judge’s refusal to allow an amendment to a statement of case, there is an added dimension to the requirements that must be met before an appellate court will disturb the impugned orders. I will now discuss these.

Principles Applicable to Amendments

[48] It is completely within the discretion of the judge to determine the case management orders that are appropriate. An appellate court will not interfere with the judge’s exercise of discretion unless it is plainly wrong. I find useful the dicta of Baptiste JA in the Eastern Caribbean Supreme Court decision of **Marinor Enterprises Limited and another v First Caribbean Bank (Barbados) Limited**.¹⁰ That case, similar to the present application, considered an application before the full court for leave to appeal the decision of a master who refused an application for Marinor Enterprises to amend its defence and counterclaim. One of the guiding principles from that case is that it well established that before an appellate court can interfere with the exercise of a trial judge’s discretion to allow or disallow an amendment, two conditions must be satisfied. First, it must be proven that the learned judge erred in principle by disregarding or failing to consider relevant factors or by considering irrelevant factors. Second, it must be proven

¹⁰ DOMHCVAP2013/0003.

that as a consequence, the learned judge has exceeded the ambit within which reasonable disagreement is possible and is therefore plainly wrong. The decision of the Eastern Caribbean Supreme Court in **Marinor** was upheld by the CCJ where Byron P, as he then was, dismissed an application for special leave against Baptiste JA's judgment.¹¹

[49] In relation to the appellate court's interference with the exercise of discretion by the judge, Sir Vincent Floissac CJ in **Dufour and another v Helenair Corporation Ltd and another**¹² expressed the rule in this manner:

"Such an appeal will not be allowed unless the appellate court is satisfied:

(1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and

(2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."

[50] In considering these two conditions, I am cognizant that the Court of Appeal ought not to reverse the learned judge's order simply because it would've exercised the discretion in a different manner nor should the Court of Appeal substitute its own decision on a fresh exercise of discretion for the discretion of the learned judge. The court may, however, be justified to reverse the learned judge's order if it has reached the conclusion that there has been a wrongful exercise of discretion. In those circumstances, the Court may remit the matter to the lower court for a fresh consideration or may substitute its own decision on a fresh exercise of discretion.

¹¹ *Marinor Enterprises and Another v First Caribbean International Bank (Barbados) Limited* [2017] CCJ 2 (AJ).

¹² (1996) 52 WIR 188 at 191.

[51] The principles distilled in the cited cases are felicitous and I endorse them. In view of these principles, it follows that Mr. Feinstein has to meet the threshold identified above in order for him to persuade this court to grant leave for him to appeal the learned judge's exercise of discretion.

[52] I turn now to interrogate the complaints advanced by Mr. Salter, K.C. on behalf of Mr. Feinstein and the counter arguments proffered by Mr. Courtenay, S.C. and Mr. Barrow, S.C. All parties have submitted that, included in the relevant factors and considerations that the learned judge was required to examine in the exercise of his discretion, are the factors listed in Civil Procedure Rule 20.1. I agree that this rule is applicable to the application at bar. CPR. 20.1 stipulates that:

"20.1–(1) A statement of case may be amended once, without the court's permission, at any time prior to the date fixed by the court for the first case management conference.

(2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.

(3) When considering an application to amend a statement of case pursuant to Rule 20.1(2), the factors to which the court must have regard shall include–

- (a) how promptly the applicant has applied to the court after becoming aware that the change was one which he or she wished to make;
- (b) the prejudice to the applicant if the application were refused;
- (c) the prejudice to the other parties if the change were permitted;
- (d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
- (e) whether the trial date or any likely trial date can still be met if the application is granted; and
- (f) the administration of justice."

[53] I will now examine these relevant factors together with the learned judge's decision and the proceedings in the court below.

[54] I begin with CPR 20.1(3)(a), which I have conveniently titled "Promptness and the Quality of Explanation for Lateness."

Promptness and the Quality of the Explanation for Lateness

[55] The lateness of an application, relative to the trial date is a salient, but not definitive factor that a trial judge must contemplate in the exercise of his discretion. As Lord Justice Briggs indicated in **Hague Plant Limited v Hage and Ors**,¹³

1. *Lateness is not an absolute but a relative concept... It all depends upon a careful review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of its consequences in terms of work wasted and consequential work to be done...*
2. *Lateness, used in this way, is a factor of almost infinitely variable weight, when striking the necessary balance in determining whether or not to permit amendments. The weight to give to this consideration in any particular instance is quintessentially a matter for the case management judge, not lightly to be interfered with on appeal unless shown to have been seriously flawed either by taking into account irrelevant matters, omitting relevant matters, or perversity."*

[56] It is for the party proposing the amendment to justify his lateness. The trial judge was presented with the Notice of Application and accompanying affidavit of Michael Feinstein, both filed 17th October 2025. In Ground 3 of the Notice of Application, Mr. Feinstein indicated, as the sole reason for the late amendment, that:

"The lateness of the application is due entirely to the recent change in representation and that all relevant material be placed before the Court so that it may deal with cases justly. The First Defendant has acted promptly and responsibly upon obtaining proper legal advice."

[57] Further clarification was given in the Affidavit of Michael Feinstein dated 17th October 2025 where Mr. Feinstein indicated that:

¹³ [2014] EWCA Civ 1609.

“2. In July 2025, I appointed new legal representatives to assist me with various proceedings pending before the Courts of Belize, which arise out of the Stake Bank cruise ship terminal development project. These representatives are Pinna Goldberg LLP and barristers Mr Richard Salter KC and Mr Rumen Cholakov of 3 Verulam Buildings Chambers in London.

3. Without waiving privilege, the new legal representatives have been reading into the complex interrelated facts of a number of proceedings in order to be able to advise me as soon as possible. Mr Salter KC and Mr Cholakov’s application for admission to the Bar of Belize are still pending and are anticipated to be heard on 27 October 2025 and 21 October 2025 respectively. This is because the Honourable Judge hearing the application required Mr Salter KC and Mr Cholakov to appear in Belize in person when the applications are moved. Mr Salter KC and Mr Cholakov will appear in person as required.”

[58] With this justification in mind, the trial judge considered the lateness of the application in this way:

“[17] In this background, the court is of the view that the 1st defendant had ample time to make the present application without causing a disturbance of the trial dates and that the application and the affidavit of the 1st defendant do not contain any cogent or acceptable reasons why this application could not have been made in a timely manner without disturbing the dates for trial which have already been rescheduled three times. The court is therefore inclined to view this application as an abuse of the process of the court made with a view to delay the proceedings. The court is therefore mindful that it could strike out the 1st defendant’s application in terms of Rule 11.5(1)(a) and (b).”

[59] After setting out Rule 20.1(3), the Learned judge further stated:

“[19] As can be seen from this Rule, the first consideration is how promptly the application has been made after becoming aware of the changes to be made. The 1st defendant retained his new counsel in July 2025 and therefore, this court is of the view that the application presently being made 8 working days before the trial cannot be considered an application that conforms with the ethos of Rule 20.1(3)(a).”

[60] I am of the considered view that the learned trial judge cannot be faulted for his conclusion on the lateness of the application. The trial had been adjourned on three previous occasions, the third of which, in July 2025, was at the request of Mr. Feinstein due to him having retained new counsel. The court acquiesced to Mr. Feinstein’s request

in July 2025 to adjourn and the trial dates were vacated to 29th, 30th and 31st October 2025. Equipped with this knowledge, it was incumbent on his new counsel to familiarize themselves with the material and to make their applications, if any, in a timely manner. I definitively adopt the position that the reappraisal of newly instructed counsel of the merits of a case is not in itself a good explanation for a late amendment.¹⁴

[61] I am also cognizant that, as submitted by Mr. Feinstein, this is one of several interrelated matters before the court. Notwithstanding this fact, approximately three months had elapsed between the last adjournment and the filing of the application. I am of the considered view that, in the absence of a justifiable excuse, this was ample time for a timeous application to be made. An application eight working days before trial is not timeous as it would invariably result in a further disturbance of the trial dates. The learned judge rightly indicated that, despite the proximity to the trial date, Mr. Feinstein did not treat the application as an urgent application by filing a certificate of urgency as directed by CPR 11.6(3). As the learned judge indicated, on the mention date, Mr. Courtenay, S.C., counsel for Atlantic Bank and OPSA indicated to the court that his clients would vigorously oppose the application.¹⁵ Thereafter Mr. Cholakov made an oral application for an adjournment. When combined, the application to amend and the oral application to adjourn threatened the trial date. An application that threatens the trial date is not merely a late application, it is an application that is very late, and in those circumstances the interest of justice leans in favour of not granting the application.¹⁶

[62] Additionally, although this information was not before the trial judge and was only declared in the written submissions before the single judge of the Court of Appeal, Mr. Feinstein's new team reformulated the draft amendments and supplemental witness statements with the assistance of Marine Parade Chambers, the firm of attorneys that represented Mr. Feinstein from the genesis of this claim. Mr. Feinstein was equipped

¹⁴ *Marinor (Supra)*, *Worldwide Corporation Ltd v GPT Limited* [1998] All ER (D) 667.

¹⁵ Trial transcript page 8.

¹⁶ *Swain-Mason and Others v Mills and Reeve LLP* [2011] EWCA Civ. 14.

with a competent team of local and international attorneys-at-law. Merely indicating that the delay was due to the appointment of new counsel, without any further legitimate explanation is unsatisfactory. It is if no moment that Mr. Richard Salter, K.C. and Mr. Rumen Cholakov, the new counsel representing Mr. Feinstein, were respectively called to the Belizean bar on 27th October 2025 and 21st October 2025 as the impugned application had been made even without the admission of those counsel.

[63] Mr. Feinstein rightly submitted in his written submissions that CPR 20.1(3)(a) required the judge to consider his promptness 'after becoming aware that the change was one which he wished to make.' I am cognizant of that qualification. However, it is noteworthy that Mr. Feinstein did not indicate in his application or affidavit evidence, when he became aware of the need to amend his pleadings or adduce the fresh evidence in the form of the two witness statements. I reiterate the position that it is for the party proposing the amendment to justify his lateness. Having failed to do so, it became quintessentially a matter for the case management judge to afford weight to the delay¹⁷ and he cannot be faulted for treating it as an abuse of process.

Prejudice to the parties – Rule 20.1(3)(b) and(c)

[64] I acknowledge that promptitude is but one of the relevant considerations under CPR 20.1(3). It is only one of the factors to be brought in the balance when deciding to strike a fair balance.¹⁸

[65] In addition to the reasons for delay, CPR 20.1(3)(b) and (c) respectively require the court to consider the prejudice to the applicant if the application is refused and the prejudice to the respondents if the application is granted. In respect of these factors, I find the principles that were enunciated by Kitchin LJ in **Ali v Saddique**¹⁹ instructive. In an

¹⁷ Hague Plant Ltd v Hague and another (supra).

¹⁸ PJSC Tatneft v Bogolyubov [2020] ewhc 623 (Comm) at para 15.

¹⁹ [2015] EWCA Civ 1258.

appeal challenging a trial judge's decision to allow the claimant in that case to amend his particulars of claim at trial, Kitchin LJ, in delivering the judgment of the Court of Appeal of England and Wales, distilled the following principles:

“45. I begin with the issue of amendment of the particulars of claim. In considering any application to amend a court is concerned to ensure that the case is dealt with justly and that, so far as practicable, the real issue between the parties can be adjudicated upon. However, the court is also concerned to ensure that a party faced with an amendment is not unfairly prejudiced. If an amendment is sought at any early stage in a claim, it will often be the case that any such prejudice can be adequately compensated in costs. But where an amendment is sought at a very late stage and perhaps, as here, at the trial, the position may be very different. A party faced with an application to make such a late amendment may be placed in great difficulty in giving it adequate consideration, in determining how it affects the case that has been prepared and in assessing whether, for example, it requires a corresponding amendment to its own pleading, further disclosure or fresh evidence or even an adjournment.

*46. For all of these reasons a court will not only consider the prejudice that would be caused to the party seeking a late amendment if it were refused but will also have careful regard to the prejudice that would be caused to the party faced with the amendment if it were allowed. Moreover, relevant factors to consider will include the degree of precision with which the proposed amendment is formulated and any explanation as to why it is being made so late. Indeed it has been emphasised on more than one occasion by this court that a party seeking a late amendment bears a heavy onus to justify it: see, for example, **Swain-Mason v Mills & Reeve** [2011] EWCA Civ 14, [2011] 1 WLR 2735 at [72] per Lloyd LJ (with whom Elias and Patten LJJ agreed).”*

[66] The learned judge in the court below addressed prejudice to the parties in the following manner:

“The court is also required to consider what prejudiced(sic) will be caused to the parties if the application was refused or permitted. While the 1st defendant states that material prejudiced (sic) would be caused to him, the court is of the view that most of the amendments that are sought are matters that can be dealt with in submissions and that therefore, no material prejudiced (sic) would be caused to the 1st defendant. The new evidence, however, is a matter that the 1st defendant ought to have considered as relevant previously. There was ample opportunity at Case Management and at dates given thereafter for applications or even after the initial

rescheduling of the trial dates for the first defendant to consider amending his evidence. To do so now, after the 11th hour, would cause the claimants to also seek to add fresh evidence in rebuttal, which will further delay these proceedings unjustly.”

[67] Here, the trial judge was required to conduct a balancing exercise, having regard to the importance of the suggested amendments. It is axiomatic that if the amendments were not allowed, the prejudice faced by Mr. Feinstein is that he would have been unable to advance the further amended defences and witness statements. He would be confined to arguing the appeal on the existing pleadings. This is, of course, an important and relevant factor that the learned judge was required to consider in the exercise of his discretion. However, it is the law that if the prejudice has come by the amending party's own conduct, it is a much less important factor in the balancing exercise. This is exactly the position before us as it is Mr. Feinstein's election to appoint new counsel and file his very late amendments without offering a proper reason that puts the court in this situation.

[68] In his written submissions, Mr. Feinstein submitted that the judge gave no consideration to the prejudice to the other parties if the changes were permitted and that, had he done so, he would've concluded that no significant prejudice not compensable by a suitable award of costs would be caused to Atlantic Bank and OPSA by a short adjournment. He submitted that on Atlantic Bank's own case, it has already been paid out and made whole and has no further relevant interest in the outcome of the proceedings and that OPSA's relief in relation to the ownership of the Extension has already been achieved as a result of the Order of the Government upheld by the judgment in Claim 533 of 2024.

[69] The prejudice that the court was required to consider is primarily in regard to the effects that allowing or disallowing the application will have on the parties during the trial process. The prejudice to the resisting parties if the application was granted included the fact that the trial dates would inevitably be vacated (as they have since been). In connection with this point, Mr. Feinstein asked the court to consider the fact that the trial dates were vacated on three previous occasions and that, of those three adjournments, only the July 2025 adjournment was at his request. Both Mr. Cholakov in the court below

and Mr. Salter, K.C. submitted that allowing the subsequent adjournment would cause no prejudice as it would be putting the parties on equal footing. With utmost respect to Mr. Salter, K.C. and Mr. Cholakov, I find that this is an oversimplification. Case management orders for the filing of witness statements and standard disclosure were issued by the court from as early as 15th July 2024, and the three previous adjournments were requested after the pleadings were already closed. Allowing those adjournments did not materially impact the substance of the parties' cases nor the tasks they were required to perform. This application and the resultant adjournment for its consideration and/or for allowing the resisting parties to respond would necessitate the reopening of the pleadings and the performance of several additional tasks both by the court and the parties.

[70] Even if, as Mr. Salter, K.C. submitted, there was no need for an adjournment as the application could have been heard on the first day of trial, the resisting parties would need to investigate and revisit their own pleadings with a view to responding to the defences and witness statements in a timely manner. This would place their attorneys under considerable strain and force them to expend significant time, energy and resources within the short window available between the application and trial. I find that no matter how well-resourced litigants are, this duplication of cost and effort is not a burden the court should easily compel them to undertake. The learned trial judge had a similar contemplation when he indicated that to allow the amendments 'now, after the 11th hour, would cause the claimants to also seek to add fresh evidence in rebuttal, which will further delay these proceedings unjustly.'²⁰

[71] The prejudice to the parties if the amendments were allowed or disallowed is to a considerable degree linked to the delay already examined. The delay having been caused by Mr. Feinstein's own doing, I find that the judge's finding in relation to the prejudice to the parties is justified. As explained by Henderson J In **Wanni LLP v Royal**

²⁰ Atlantic Bank Limited and another v Michael Feinstein and another - Claim No. AP 188 of 2024 at para. 21.

Bank of Scotland plc and another,²¹ litigants who leave a substantial application to amend until a late stage cannot reasonably complain if the undoubted prejudice to them caused by the refusal of the application is found to be outweighed by the other factors which the court has to take into account.

[72] I turn now to the additional factors under CPR 20.1(3).

Costs, Threat to the Trial Date and the Interest of Justice

[73] CPR 20.1(3)(d) requires the court, in conducting its balancing exercise, to consider whether the prejudice to any party can be compensated by the payment of costs or interest. I accept that the learned trial judge's written decision did not contain any discussion on this factor. Nonetheless, I fully endorse the position that, in considering an application to amend, the court does not discount prejudice to other parties simply because they can be compensated in costs. There is a plethora of authorities in support of this position. As Baptiste JA ruled in **Marinor Enterprises (supra)**, the proper approach is that the court is enjoined to consider the holistic effect of the disruption occasioned by the application including the impact on the parties, as well as on efficient case management and the administration of justice generally.

[74] This, of course, necessarily requires consideration of the additional factors under CPR 20.1(3)(e) and (f); namely, whether the trial date can still be met if the application is granted and the administration of justice. I am of the view that these factors were addressed by the learned judge. In paragraph 2 of his written judgment, the learned judge explicitly states the application interfering with the trial dates as the reason for calling the hearing on 24th October 2025 and reiterates this position in paragraph 19 of his judgment. As adumbrated earlier, it is also clear from the hearing transcript²² that when confronted with Atlantic Bank and OPSA's intention to oppose its application, Mr. Cholakov moved the court to adjourn the trial so that the application to amend could be

²¹ [2015] EWHC 1181 (Ch).

²² Page 8 of the Trial Transcript.

heard. This oral application and the reality that the trial dates would be overtaken by a hearing invariably operated on the mind of the learned judge and was a fundamental reason for him moving to hear the application on paper. It is evident that the judge considered that the trial date could not be met as a relevant factor in his decision to refuse Mr. Feinstein's application.

[75] Similarly, the learned judge, in paragraphs 22 and 23 of his written decision, considered the overriding objective and the administration of justice. Specifically, in paragraph 23, he noted that:

"[23] Further, the Overriding objectives require the court to consider allotting a case an appropriate share of the court's resources while taking into account the need to allot resources to other cases. As discussed above, this trial has already been rescheduled three times. The trial has on each occasion been allocated three days. It is thus seen that the court has allocated sufficient time for this case and that it would be unjust to reschedule it that expense of other litigants who also compete for the court's resources"

[76] This is an appropriate observation given the history of this matter. The trial of this matter had been adjourned on three previous occasions and on each occasion, three scheduled days had been vacated. In a jurisdiction such as Belize, where litigation is frequent and the court's resources are already stretched thin, the interest of justice is not appropriately served by an indiscriminate number of adjournments in a single matter.²³ Intolerable delays, without proper justification, are inimical to the proper administration of justice. It is Mr. Feinstein's own submission that the present matter is just one of multiple related claims before the High Court and the Court of Appeal. These cases, and those brought by other litigants are deserving of a fair share of the court's resources. The learned judge had a duty to ensure that the court is accessible, fair and efficient to all litigants. Timeous filing is one component of instilling justice in litigation

²³ This may be further contextualised by bearing in mind that in Belize, prior to 2022 and the further promulgation of the **Senior Courts (Civil Procedure) Rules, 2025**, there were horrendous backlogs dating as far as over eight years in the Civil Division of the High Court. The Court has extended tremendous effort to reduce this backlog.

and in the justice system. This exercise of the judge's discretion cannot be faulted as being wrongly applied.

[77] Taking into account the totality of the circumstances and applying the test distilled in **Dufour** (supra), I am led to the conclusion that the trial judge did not err in principle by taking into consideration irrelevant factors. He considered the relevant principles under CPR 20.1(3) for the exercise of his discretion. In particular, Mr. Feinstein did not satisfy his duty to provide the learned judge with an adequate explanation for his very late application, nor did he disclose whether the application was being made promptly after discovering that it was needed (CPR. 20.1(3)(a)). In those circumstances, the learned judge cannot be faulted for finding that an application that was brought eight days before trial would cause prejudice to other parties in the matter. The learned judge contemplated that the prejudice that would be caused to Mr. Feinstein is him being unable to advance his amended defence. However, the learned judge was entitled to find that the prejudice that would be caused to Mr. Feinstein was outweighed by the prejudice to the other parties since he had given no good reason for his delay.²⁴ Notwithstanding that the learned judge did not discuss whether prejudice to the other parties could be adequately compensated by the payment of costs, I reiterate and endorse the submission by Mr. Courtenay, S.C. that costs are not a panacea and that prejudice ought not to be discounted because of the possibility of being compensated in costs.²⁵ Clearly, counsel for Mr. Feinstein conceded that the trial date could not be met if the application was granted and, finally, the learned judge contemplated the interest of justice when he considered that granting the application would not be in keeping with the overriding objective.

[78] Having set out these conclusions, it is axiomatic that in my considered view there is no prospect of success in ground 1 of Mr. Feinstein's proposed Notice of Appeal. The learned judge was alive to the relevant factors under CPR 20.1(3). His failure to address

²⁴ Wanni LLP v Royal Bank of Scotland plc and another (supra).

²⁵ Marinor Enterprises Limited and another v First Caribbean Bank (Barbados) Limited (supra).

the adequacy of costs is not fatal to his determination. I also endorse the submissions made by Mr. Barrow, S.C., on behalf of SBEL in so far as he submitted that there is no mandatory weight to be afforded to the factors under CPR 20.1(3) and it was therefore open to the judge to afford particular weight to any factor including finding that the lateness of the application looms larger or largest.

[79] The weight to afford to any factor is quintessentially a matter for the trial judge.²⁶ He did not explicitly indicate that the lateness of the application was his main concern. However, from his judgment and from the transcript of proceedings, it is evident that the lateness of the application was a dominant feature in the learned judge's mind. In that same vein, Mr. Salter, K.C.'s reliance on the trilogy of cases, namely **Groarke v Fontaine**²⁷, **The New York Laser Clinic Limited v Naturastudios Limited**²⁸ and **PJSC Tatneft v Bogolyubov** is unhelpful in the circumstances. As both Mr. Courtenay, S.C. and Mr. Barrow, S.C. have submitted, those cases are distinguishable on their individual facts. I find the submissions by Mr. Courtenay, S.C. and Ms. Swift particularly attractive. In **Groarke**, the learned judge found that there was no countervailing prejudice to the claimant as no court time and no court resources would be diverted. This is not the position in the case at bar. In **The New York Laser Clinic Limited** case, the judge on appeal agreed that the Deputy Judge's decision was within his discretion even if another decision was possible. This is the same approach taken in our jurisdiction. Finally, in **PJSC Tafnet**, the application to amend was made one year before trial as opposed to the eight days in the present matter.

[80] Ground 2 of Mr. Feinstein concerned the application of the overriding objective and, in particular, dealing with cases justly pursuant to CPR 1.1(2). I have already treated with this earlier in paragraph [76] of this judgment. The overriding objective operates for the benefit of all court users. It was open to the learned judge to consider the history of the

²⁶ *Hague Plant Limited v Hage and Ors* (supra).

²⁷ [2014] EWHC 1676 (QB).

²⁸ [2014] EWCA 421 (Civ).

case and the court's time and resources that have already been allocated and would be further allocated to this matter vis-à-vis other litigants. I am of the view that this ground of appeal has no prospect of success.

Application for Stay

[81] I will now briefly address Mr. Feinstein's application for a stay. The application for stay is incidental to Mr. Feinstein's application for leave to appeal. It is settled law that in so far as Mr. Feinstein has been unsuccessful in obtaining leave to appeal, the application for a stay falls away.²⁹

CONCLUSION

[82] I am ineluctably driven to conclude that the discretionary case management orders are perfectly within the preserve of the case management judge. Upon reviewing the applicable law, the learned judge's reasonings and the background of the application, I am of the view that it is inappropriate for this court to interfere with the exercise of the learned judge's discretion. His exercise of his discretion considered the relevant principles applicable to an application to amend a statement of case. The exercise of his discretion is therefore not plainly wrong nor is it outside of the generous ambit in which reasonable decision makers may disagree.

[83] In view of the totality of the circumstances, I make the following orders:

1. Mr. Feinstein's renewed application for leave to appeal the decision of Goonetilleke J, dated 24th October 2025 is refused and the stay denied.

²⁹ Cage St. Lucia and Treasure Bay (St. Lucia) Limited v The Gaming Authority and Others HCVAP 2011/045.

2. Mr. Feinstein is to pay to the Respondents, the costs of this application to be assessed, if not agreed, within 21 days.

[84] I am grateful for the assistance of all learned counsel.

Louise Esther Blenman
Chief Justice

[85] I concur.

Sandra Minott-Phillips KC
Justice of Appeal

[86] I concur.

Michelle Arana
Justice of Appeal