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

CIVIL APPLICATION NO. 7 OF 2025

BETWEEN:

CARIBBEAN INTERNATIONAL BREWERY COMPANY LIMITED

Applicant

and

ISLAND CITY SUPERMARKET LIMITED
RICHE'S SUPERMARKET LIMITED
SHAOBING YAN
WENYUAN ZHEN

Respondents

Heard Together with

CIVIL APPLICATION NO. 8 OF 2025

CARIBBEAN INTERNATIONAL BREWERY COMPANY LIMITED

Applicant

and

SHAOBING YAN

Respondent

BEFORE:

The Hon Mde. Justice Marguerite Woodstock Riley, KC	Justice of Appeal
The Hon Mde. Justice Sandra Minott-Phillips, KC	Justice of Appeal
The Hon Mr. Justice Peter I Foster, KC	Justice of Appeal

Appearances:

Mr Richard Bradley instructed by Bradley & Company, Attorneys-at-law for the Applicant
Mr Immanuel Williams instructed by Glenn D. Godfrey & Co LLP for the Respondents

2026: March 6
September 11

Decision

[1] **FOSTER JA**: Before the court are two applications by Caribbean International Brewery Company Limited ("the applicant") for leave to appeal against interlocutory orders made by Mansoor J ("the learned judge"). In Civil Application No. 7 of 2025, the applicant seeks leave to appeal the learned judge's decision, made on 15th May 2025, to strike out its claim in Claim No. 25 of 2025. In Civil Application No. 8 of 2025, the applicant seeks leave to appeal the learned judge's decision, made on 14th May 2025, to refuse its application to strike out a claim by Shaobing Yan in Claim No. 190 of 2024. For reasons that will soon become apparent, it is important to state at the outset that there is no dispute between the parties that the learned judge's orders were perfected on 26th June 2025. Neither is it suggested, with evidence or otherwise, that either order was signed, entered or otherwise perfected at any earlier date.

[2] The respondents filed notices of preliminary objection to the applications for leave to appeal on 3rd November 2025, asserting that the applications are a nullity for being filed out of time. The preliminary objection is common to both applications and concerns the court's jurisdiction to hear the applications for leave. It is therefore necessary to address the preliminary objection at the outset.

The preliminary objection

[3] In advancing the preliminary objection, the respondents submit that the learned judge's decisions in the court below were interlocutory and leave was required to appeal them. The respondents submit that, under the Court of Appeal Rules, the applicant was required to file its applications for leave to appeal within 21 days of the date the learned judge's decisions were delivered. The decisions were handed down on 14th and 15th May 2025, and the applicant did not file its notices of motion until 17th July 2025, well outside that 21-day period.

In the circumstances, the respondents contend that, in the absence of an application for extension of time, this court has no jurisdiction to entertain the applications for leave, and the applications are accordingly a nullity.

[4] The respondents' submission rests on Order II, Rule 2(1) of the **Court of Appeal Rules** (or "the Rules"), which states that the application for leave to appeal must be filed within 21 days "from the date of the decision". They rely on **Gary Joseph McDonald v Michelle Rose,**[1] **Ruby Mitchell v John Wilson**,[2] **June Blackman v Gittens-Blackman**,[3] **Fotis Andrianakos v Financial Services Commission**,[4] **Ariel Mitchell v Lopez Equipment Co. Ltd**[5] and **Ferdinand Frampton v Ian Pinard**,[6] for the propositions that time runs from the date the judge hands down the decision, and not from the later date on which the order is perfected, and that the failure to apply for an extension of time is itself sufficient reason to dismiss for want of jurisdiction. In the alternative, the respondents submit that even if the court has a discretion to entertain a late application, the applicant has placed no material before the court in the form of an application or evidence, going to the length of or reasons for the delay, upon which that discretion could be exercised.

[5] The applicant, in response, submits that the time did not begin to run on 14th or 15th May 2025 at all. It submits that the governing statutory provision, section 202(1) of the **Senior Courts Act, 2022** (or "the Act"), fixes the commencement of time by reference to the date on which the order was "signed, entered or otherwise perfected", and not by reference to the delivery of reasons. The order was perfected on 26th June 2025. Therefore, the applications filed on 17th July 2025 were filed within 21 days of the only event that could have started the clock. On that footing, no extension of time was required, and the question of nullity does not arise.

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[1] [2019] EWCA Civ 4.
[2] [2017] CCJ 5.
[3] [2014] CCJ 17.
[4] Eastern Caribbean Supreme Court, Court of Appeal decision MNIHCVAP2021/0008, delivered orally on 7th February 2022.
[5] Civil Application No 5 of 2017
[6] Eastern Caribbean Supreme Court, Civil Appeal No.15 of 2005, delivered on 3rd April 2006.

[6] The applicant submits that Order II Rule 2(1) of the **Court of Appeal Rules**, being subsidiary legislation, cannot override section 202(1), and that any inconsistency between the Rule and the section must be resolved in favour of the section. The applicant relies on section 21(b) of the **Interpretation Act**, and the cases of **Morning Star Breeze Ltd v Eco Building Technologies Ltd**,[7] **The Prime Minister of Belize et al v Vellos et al**,[8] **Mahitani v Castillo**,[9] **Borrero v Levy**[10] and **Ramirez v Ramirez**,[11] as establishing that time for an application for leave runs from the perfected order and not from the delivery of the decision or reasons.

[7] The preliminary objection raises a single question. That question is whether the 21-day period for filing an application for leave to appeal runs from the date on which the decision is delivered, or from the date on which the order is "signed, entered or otherwise perfected"? If it runs from the date of the perfected order, the result is that the applications were brought in time and the objection falls away. If, however, time runs from the date the learned judge's decisions were delivered, then the applications for leave to appeal are out of time, and the court would lack jurisdiction to entertain them.

[8] I find the applicant's arguments more persuasive than the respondents' on this issue and conclude that the time for filing the applications is controlled by section 202(1) of the Act. Accordingly, time ran against the applicant for the filing of the applications for leave from the date the orders were perfected on 26th June 2025. Therefore, the applications were filed within time, and the preliminary objection should be dismissed. My reasons for so concluding now follow.

[9] The starting point for resolving the preliminary objection is that rights of appeal to the Court of Appeal are statutory. Therefore, the court must assess the statutory provisions governing the commencement of the appellate process in this case. There is no dispute that the learned judge's orders were interlocutory in nature and therefore that the applicant required leave to

[7] Belize Court of Appeal, Civil Appeal No. 5 of 2015.
[8] Belize Court of Appeal, Civil Appeal No. 17 of 2008.
[9] Belize Court of Appeal, Civil Appeals Nos. 36 of 2009 and 2 of 2009.
[10] Belize Court of Appeal, Civil Appeal No. 21 of 2014.
[11] Belize Court of Appeal, Civil Application No. 7 of 2023.

appeal, in accordance with section 201(3)(b) of the Act. The time for making such an application is governed by section 202(1), which provides:

> "Where a person desires to appeal under this Part to the Court he shall give notice of appeal or **notice of his application for leave to appeal in such manner as may be directed by rules of court within twenty-one days from the date on which the order of the High Court or a judge thereof was signed, entered or otherwise perfected**." (Emphasis added)

[10] The Rules, which are subsidiary legislation under the Act, are relied upon by the respondents and are also relevant. Order II Rule 2(1) of the Rules deals with applications for leave and provides that a person desiring leave shall apply within 21 days, and that "the period of twenty-one days shall run from the date of the decision against which leave to appeal is sought".

[11] Section 202(1) and Order II Rule 2(1) are both clear in wording and effect. Section 202(1) provides that the time for filing an application for leave to appeal commences at the date the order was perfected, whether by signature, sealing or otherwise. This interpretation has been consistently applied to similarly worded provisions in legislation that predates section 202(1) of the Act.

[12] In **Mahitani v Castillo**, **Borrero v Levy** and **The Prime Minister of Belize et al v Vellos et al**, this court interpreted section 16 of the now-repealed Court of Appeal Act, which read:

> "16.(1) Where a person desires to appeal under this Part to the Court he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within twenty-one days from the date on which the order of the Supreme Court was signed, entered or otherwise perfected."

[13] The court held, on each occasion, that the period within which an application for leave to appeal is to be made runs from the date on which the judgment is perfected, and not from the date on which it is delivered. Section 16(1) of that Act is clearly in *pari materia* with section 202(1) of the present Act.

[14] On the other hand, Order II Rule 2(1) indicates a different trigger for the timeline for filing an application for leave to appeal. It provides that time will run from the date the decision is delivered. This means that the time for filing will run as soon as the decision is issued, regardless of whether the formal processes of perfection have been completed.

[15] The conflict in starting points for filing leave applications is the root cause of the parties' disagreement as to whether the applicant filed its applications in this case within the required time. The resolution of this conflict is found in both the well-known rules of statutory interpretation and this court's previous decisions.

[16] It is an established rule of statutory interpretation that where primary and subsidiary legislation conflict, the primary legislation will prevail to the extent of the inconsistency. That rule is codified in section 21(b) of the Interpretation Act, which provides that "no subsidiary legislation shall be inconsistent with the provisions of the Act under which it is made". The Act is primary legislation from which the Rules derive their legal authority. Section 202(1) and Order II Rule 2(1) are inconsistent insofar as they provide different starting points for computing the time limit for filing an application for leave to appeal. Whereas section 202(1) permits the rules to stipulate the manner in which an application for leave should be made to the court, it also expressly sets the time period within which the application should be filed. Therefore, applying the settled principles of statutory interpretation codified in section 21(b) of the **Interpretation Act**, there is no scope for the Rules to impose a different time limit for filing the application, which would be contrary to section 202(1). To the extent that Order II Rule 2(1) purports to fix a different starting point, it is inconsistent with section 202(1) and must yield to it.

[17] Two of this court's previously decided cases, interpreting section 202(1), take a similar approach. The first is **Ramirez v Ramirez**. In that case, the court was not confronted with a submission that Order II Rule 2(1) was applicable. However, the court assessed the timelines for filing an application for leave to appeal with regard to the date that the judgment or order was perfected, in keeping with section 202(1). The court reasoned:

> "Section 202(1) of the Senior Courts Act 2022 provides that a person shall give notice of his application for leave to appeal in such manner as may be directed by the Rules of the Court within twenty-one (21) days from the date on which the order of the High Court or a Judge thereof was signed, entered or otherwise perfected. While the Trial Judge gave her decision on the 4th September 2023, three (3) separate orders were filed consequent on the three (3) separate applications to strike out made by the Defendants and the Interested party. The first order, which related to the 1st and 2nd Defendants, was perfected on the 20th September 2023. The Intended Appellant filed his application for leave on the 20th October 2023 before the High Court, but withdrew the same in circumstances of dispute as to whether the High Court had jurisdiction to hear such applications. The application to the Court of Appeal was made on 8th November 2023 and was therefore beyond the twenty-one (21) day period required by section 202(1) of the Senior Courts Act 2022. However, the Court may, under section 202(3), enlarge the time limits mentioned."

[18] The second decision, which requires particular attention, is that of this court in **Enriquez v Attorney General of Belize**.[12] In that case, a trial judge had dismissed an interlocutory application on 18th February 2025, and the appellant filed a notice of appeal on 21st February 2025 on the strength of a draft order signed by all parties and the judge, but which had not been sealed by the Registrar. The Court of Appeal, by majority, struck out the appeal as a nullity for want of a perfected order under section 202(1) of the Act.

[19] All three members of the court agreed that the twenty-one day period prescribed by section 202(1) is calculated from the perfection of the order, and not from the date on which the decision is delivered. The majority (Hafiz-Bertram P and Minott-Phillips JA) held that section 202(1) ensures "that time begins to run from the time an order is perfected".[13] The majority reasoned that the provision does not refer to the date on which the judge or registrar, as the

[12] Belize Court of Appeal, Civil Appeal No. 6 of 2025.
[13] Paragraph [23].

case may be, made the order, but refers to the date on which the order was authenticated by receiving, in one way or another, the seal of the court in which it was pronounced.[14] Woodstock-Riley JA, in her dissent, similarly acknowledged that a party "cannot appeal beyond twenty-one days from the date the order is signed, entered, or otherwise perfected"[15] and that the authorities state that "the period to file an appeal is twenty-one days from the date on which the judgment is perfected".[16]

[20] The difference of opinion between the judges concerned two questions. The first question was what act perfects an order. The majority held that an order is perfected only when it has been signed and sealed by the Registrar. Woodstock-Riley JA held that the words "signed, entered or otherwise perfected" are disjunctive, and that an order which had been delivered in writing and an Order signed by the judge and both parties might properly be regarded as having been otherwise perfected. The second question was whether perfection marks not only the point from which the twenty-one days are computed, but also the earliest point at which an appeal may validly be filed. Neither of those questions arises in this appeal, because there is no dispute that the learned judge's orders were perfected on 26th June 2025, and no earlier signing or entry is asserted; and the applications for leave were filed after, not before, that date.

[21] The Caribbean Court of Justice ("CCJ") delivered its reasons for decision on appeal from the majority's judgment on 7th July 2026: **Enriquez v Attorney General of Belize**.[17] Special leave to appeal had been granted, and the appeal was allowed. The parties before us have not had an opportunity to make submissions on that decision, which was delivered after the hearing of these applications had concluded. As such, I have not relied on this decision as a primary basis for my decision on the preliminary objections in this case. I simply observe that the reasons for the CCJ's decision confirm my reasoning, and the unanimous finding of the court that the computation of the time limit runs from the date of perfection.

[14] Paragraph [30].
[15] Paragraph [47].
[16] Paragraph [52].
[17] [2026] CCJ 8 (AJ) BZ.

[22] The CCJ held that the words "signed, entered or otherwise perfected" in section 202(1) operate disjunctively, so that any one of those steps is a sufficient statutory trigger for the filing of an appeal or of an application for leave to appeal. The purpose of the section, the court held, is to prescribe a time limit beyond which an appeal may not be filed, and Parliament cannot have intended to preclude or thwart the filing of an appeal where the order has been signed by the parties and by the judge but has not been signed and sealed by the Registrar.

[23] Two consequences are relevant for present purposes. First, the CCJ has confirmed that the twenty-one day time limit under section 202(1) runs from the signing, entering or otherwise perfecting of the order, and not the pronouncement of the decision or the delivery of the judge's reasons. This conclusion was common ground among all judges in the Court of Appeal, and it accords with **Mahitani**, **Borrero**, **Vellos** and **Ramirez** insofar as those decisions hold that time runs from the date of the perfected order, not from the delivery of the decision.

[24] Secondly, the decision clarifies the nature of the events which amount to perfection under section 202(1). It is no longer open to this court to hold that an order is perfected only upon its signature and sealing by the Registrar. An order may equally be perfected by being signed or by being entered, and the time limit runs from the step by which the order was in fact perfected. In a case in which an order signed by the judge preceded the Registrar's seal, that distinction might well be decisive of the computation of time. It is not decisive here because there is no dispute between the parties that the learned judge's orders were perfected by the Registrar on 26th June 2025, and it is not suggested that either order was signed or entered at any earlier date. On any view of section 202(1), therefore, time began to run on 26th June 2025.

[25] The rules of statutory interpretation, the previous decisions of this court, and now the decision of the Caribbean Court of Justice in **Enriquez** therefore point to section 202(1) as the relevant threshold for determining whether the applications for leave to appeal were filed out of time.

[26] The respondents have relied on several decisions in support of their objection. However, none of those decisions detracts from the conclusion I have reached based on the applicable rules of statutory interpretation and the court's prior decisions. I, therefore, reject reliance on them. First, **Gary McDonald v Rose** was decided under the English Civil Procedure Rules (in particular rule 52.12), which fixes the timeline for commencing appellate proceedings from "the date of the decision of the lower court". The Senior Courts Act, which is the superior governing legislation in this jurisdiction, anchors the filing timeline from the perfection of the order. **Ferdinand Frampton v Ian Pinard**, **Ruby Mitchell**, **Blackman** and **Fotis Andrianakos** similarly arise under procedural regimes that differ materially from those governing appeals in Belize, and none of those cases considers or decides when time begins to run under a provision equivalent to section 202(1). They do not assist the respondents.

[27] Finally, the respondents rely upon the decision of this court in **Ariel Mitchell v Lopez Equipment Co. Ltd**. That case does not assist them. Mr Mitchell, having been refused leave to appeal by the trial judge, applied afresh to this court for leave under section 14(3)(b) of the Court of Appeal Act and Order II rule 2(1) of the Rules. The question which arose was what time limit governed such a renewed application, the Rules being silent upon the point. The decision concerned the time within which a renewed application for leave must be made to this court following a refusal of leave in the court below. It did not decide the question which arises on the present preliminary objection in the present applications, which concerns the event from which the twenty-one days should begin to run.

[28] When section 202(1) is applied to the undisputed facts, the result is that the 21-day deadline for filing the applications for leave to appeal did not begin to run on 14th or 15th May 2025, when the learned judge delivered his decisions. It began to run on 26th June 2025, that being the date on which the **orders** were signed, entered or otherwise perfected (*emphasis mine*). For emphasis, there is no dispute between the parties concerning the date on which the orders were perfected, or as to what constituted perfection in this case, and no earlier signing or entry of the orders is asserted by any party. The notices of motion for leave to appeal were filed on 17th July 2025, which was the twenty-first day. The applications were therefore brought within the time prescribed by the Act, and there was no need to apply for an extension of time. The preliminary objection accordingly fails.

[29] Having dismissed the preliminary objection, I now turn to the substantive applications for leave to appeal. The applications emanate from similar facts, and the same legal principles must be engaged to determine them.

The facts common to both applications

[30] These proceedings have their origin in Claim No. 190 of 2024, **Shaobing Yan v Caribbean International Brewery Company Limited** ("the trespass claim"). By that claim, Ms Yan sued the applicant for damages for trespass and sought an injunction requiring the removal of over two thousand cases of Blue Pirate Beer, said to belong to the applicant, from her property.

[31] At the heart of that claim is a dispute as to the basis on which the applicant's product came to be on Ms Yan's premises. The applicant contends that the goods were held under a written agency agreement. Ms Yan contends that there was, at most, an oral consignment arrangement, and she denies that the signature on the written agreement is hers. The issues before the learned judge in that claim accordingly included whether there was an oral consignment agreement or a written agency agreement between the parties; whether the signature on the alleged agreement was that of Ms Yan; whether permitting the goods to remain on the premises amounted to trespass; and whether Ms Yan was entitled to the relief she sought.

[32] The claim was case managed towards trial. Witness statements and pre-trial memoranda were filed, and leave was granted to obtain expert evidence. Before the claim reached trial, however, the applicant applied to strike out Ms Yan's claim and, alternatively, for summary judgment.

[33] In the meantime, the applicant had commenced separate proceedings, Claim No. 25 of 2025, **Caribbean International Brewery Company Limited v Island City Supermarket Limited, Riche's Supermarket Limited, Shaobing Yan and Wenyuan Zhen** ("the cheque

claim"). The cheque claim was brought by the applicant, as claimant, against four defendants: Island City Supermarket Limited (the first defendant), Riche's Supermarket Limited (the second defendant), Ms Shaobing Yan (the third defendant), and Mr Wenyuan Zhen (the fourth defendant). As appears from the amended statement of claim, the third and fourth defendants are the only two directors and shareholders of both the first and second defendant companies and are a married couple.

[34] The applicant's pleaded case was that it had entered into a written agency agreement with the first defendant on 10th January 2021, under which the first defendant was to be the exclusive distributor of the applicant's products in San Pedro Town, Ambergris Caye; that products were supplied under that arrangement; and that two cheques were given in payment. The first, cheque no. 004750 for $149,429.50 dated 22nd March 2023, was drawn by the first defendant. The second, cheque no. 005793 for $100,000.00 dated 20th October 2023, was drawn by the second defendant. Both cheques were post-dated, payable to the order of the applicant, and, upon presentation to Atlantic Bank Limited, were dishonoured and countermanded. The applicant's claim was for the resulting liquidated sum of $249,429.50, with interest and costs. The defendants to the cheque claim applied to strike it out, contending that it raised the same issues and was founded on the same facts as those already before the Court in the first claim.

[35] The learned judge delivered his decisions on the applications in both claims on the 14th and 15th May 2025. In relation to the trespass claim, he refused the applicant's strike-out application, holding that there was "considerable controversy to be resolved at the trial" and that it could not be said that Ms Yan had "no prospect of succeeding". That refusal is the subject of Application No. 8 of 2025. The learned judge also struck out the cheque claim. He relied on the abuse of process principles in **Henderson v Henderson**[18] and found that the institution of the cheque claim was an abuse of the court's process because the issues it raised could, and should, have been resolved in the first claim. The striking out of that claim is the subject of Application No. 7 of 2025.

[18] [1843-1860] All ER Rep 378; 67 ER 313.

[36] Dissatisfied with these orders, the applicant has sought leave to appeal the judge's decisions.

The applicable legal principles

[37] The principles governing the grant of leave to appeal are settled. They were stated in **Karina Enterprises Ltd v China Tobacco Zhejiang Industrial Co Ltd**,[19] in which the court held that leave to appeal should be granted where any one of three situations is established:

a. a prima facie case that the court below made an error;
b. a question of general principle being decided for the first time; or
c. a question of importance upon which a decision of the Court of Appeal would be to the public advantage.

[38] The court in **Karina Enterprises** further stated that, in addition to establishing one of those categories, an applicant must show that the intended appeal has a real, rather than a fanciful, prospect of success. Therefore, in this case, which concerns the judicial discretion to strike out a statement of case, the applicant bears the burden of mounting some reasonable argument that the judge below made a mistake in law, disregarded a fundamental principle, misapprehended the facts, took into account irrelevant considerations, ignored relevant considerations, or failed to exercise his discretion properly when determining the applications before him.

[39] Because the orders sought to be appealed are interlocutory in nature, three further considerations arise. In **Belize Telemedia Limited v Attorney General et al**,[20] it was held that the Court must be satisfied that- (i) the issue is significant enough to justify the costs of an appeal; (ii) the procedural consequences of an appeal, such as the loss of a trial date, do not outweigh the significance of the interlocutory issue; and (iii) it would not be more convenient to determine the point at or after the trial. Where those considerations point against an interlocutory appeal, leave to appeal may be refused.

[19] Belize Court of Appeal, judgment delivered 7th November 2014.
[20] Belize Court of Appeal, Civil Appeal No. 23 of 2008.

[40] Taking all these principles together, therefore, the applicant must satisfy the court that:

a. the intended appeal has a real prospect of success;
b. one or more of the three categories is made out; and
c. the additional interlocutory considerations suggest that leave should be granted.

[41] I have applied this framework in evaluating the merits of the applications for leave. I turn to consider each application, beginning with Application No. 7 of 2025.

Civil Application No. 7 of 2025

[42] By this application, the applicant seeks leave to appeal the order of the learned judge striking out the cheque claim in its entirety and ordering it to pay the defendants' costs. The applicant also seeks a stay of execution of the learned judge's order.

[43] In striking out the claim, the learned judge made several findings. He noted that the two cheques had been drawn by the first and second defendants; that "the third defendant is the claimant in [the trespass claim]"; and that, in the cheque claim, "the written agreement is adverted to as the basis of the transactions for which the dishonoured cheques were given". He observed that, in its defence in the trespass claim, the applicant had alluded to the cancellation of the two cheques, but that it "did not counterclaim to recover the sum of $249,429.50 attributed to the cancelled cheques". He considered that the applicant "could have proceeded on either route in 190 of 2024", but "chose to file a separate action when outstanding issues between the claimant and the first defendant could have been resolved in 190 of 2024"; and that "the material facts urged by the claimant in this action were pleaded in the defence it filed in the previous action".

[44] The learned judge then cited several cases on the issue of abuse of process and concluded that "Institution of the present action is an abuse of the process of court when 190 of 2024 could have resolved all issues between the parties", and that "the claimant's defence in the previous action and the present claim are based on the same subject matter: the purported written agency agreement". As to the additional parties, he held that "there are two other parties in this action" whose "presence as parties does not change the character or the

issues concerning the two actions". He accordingly ordered that the defendants' application be allowed, that the claim be struck out, and that the claimant pay the defendants' costs.

[45] The applicant contends that, in arriving at that conclusion, the learned judge committed a prima facie error of law, on ten grounds which are set out in the first affidavit of Kevin Xin filed in support of the application. The applicant's arguments may be subsumed under two broad submissions. The first is that a claim brought upon a dishonoured cheque is a distinct and independent cause of action upon the instrument itself. The applicant sued not upon the written agency agreement, but upon the two cheques, seeking a liquidated sum owed on those instruments, and the learned judge erred in linking the cheque claim to the written agreement and in treating the two actions as sharing the same subject matter.

[46] The second is that the learned judge misapplied the doctrine of abuse of process by failing to consider the difference between the parties to the trespass and cheque claims. The applicant complains that the learned judge wrongly treated the factual overlap between the two actions as an abuse of process. Furthermore, in dismissing the significance of the additional parties, he wrongly equated Ms Yan's position as a personal claimant in the trespass claim with her position as one of four defendants, sued as a director, in the cheque claim.

[47] In my view, both of these submissions disclose prima facie errors by the learned judge and are arguable with a realistic prospect of success. A claim upon a dishonoured cheque is a separate and independent cause of action upon the instrument itself, upon which the holder is entitled to judgment for a liquidated sum without the court looking behind the instrument to the underlying transaction.[21] The learned judge did not reject that principle. On the contrary, he accepted that "the claimant is at liberty to decide the way in which it litigates", and that "it is open to the claimant to recover the liquidated sum of the dishonoured cheques instead of claiming damages". Having so accepted, he nonetheless held that the pursuit of that claim in a separate action was an abuse.

[21] Nova (Jersey) Knit Ltd v Kammgarn Spinnerei GmbH [1977] 1 WLR 713.

[48] It is established that the mere fact that a claimant could, with reasonable diligence, have raised a matter in earlier proceedings does not, of itself, render a later action abusive.[22] The authorities also emphasise that the court will rarely find an abuse of this character unless the later proceedings amount to an unjust harassment of the defendant.[23] The learned judge made no finding of harassment, oppression, or improper purpose in circumstances where the applicant was pursuing a legitimate claim for a liquidated debt arising from a dishonoured cheque. The question of whether, in the absence of any such finding, the threshold of abuse of process had been met is an arguable question worthy of ventilation on appeal.

[49] Secondly, in deciding whether two actions concern the same subject matter, the proper course is to compare the causes of action by reference to the material facts necessary to formulate each.[24] The material facts of the cheque claim are the drawing, delivery, presentation and dishonour of the two instruments. The existence of a written agency agreement appears to be part of the factual background to, rather than one of the material facts of the cheque claim. The learned judge, however, founded his conclusion that the actions shared "the same subject matter" upon that very agreement. It is arguable that, in doing so, he compared the actions by reference to their background rather than to the material facts of the causes of action and so misdirected himself.

[50] Thirdly, the cheque claim is brought against three defendants, including the two companies that drew the cheques, who were not parties to the trespass claim. The companies had nothing to do with the trespass claim. While the joinder of additional parties is not, of itself, always decisive of an application to strike for abuse of process, it is at least arguable that a claim against the drawers of the cheques, who were never before the court in the trespass action, could not properly be an abuse of the process in these circumstances.

[51] Finally, it is arguable that the striking out of the entire claim was a disproportionate response. Striking out has repeatedly been described as a draconian measure to be reserved for plain

[22] Moorjani v Durban Estates Ltd [2019] EWHC 1229 (TCC).
[23] Johnson v Gore Wood & Co [2002] 2 AC 1.
[24] Credit Suisse Life (Bermuda) Ltd v Ivanishvili [2025] UKPC 53.

cases. It is open to the court, when faced with an allegation of abusive claims, to case-manage the claims and try them together, rather than to extinguish one of them and deprive the affected claimant of the right to have their issues resolved.[25] The learned judge himself observed that the applicant could have brought the intended cheque claim to the court's attention in the trespass claim so that directions might be given. It is arguable that the judge's appropriate response would have been to case-manage the two actions rather than striking out the cheque claim altogether.

[52] Apart from the prospects of success, other factors point to granting leave to appeal. Cheques and other negotiable instruments circulate in commerce based on the understanding that a claim upon a dishonoured instrument may be pursued as a matter of course. The extent to which that understanding is affected by related litigation is a matter of general commercial importance, upon which guidance from this court would be of value to litigants beyond the present parties. The questions raised by the intended appeal are ones on which a decision of this court would be to the public advantage.

[53] The considerations relevant to interlocutory appeals suggest that leave should be granted. Based on my earlier findings, the issues raised are plainly significant enough to justify the costs of an appeal, because the order under challenge is a final determination that brings the applicant's claim to recover $249,429.50 to an end. Secondly, and for the same reason, the procedural consequences of an appeal do not outweigh the significance of the interlocutory order. Thirdly, it cannot be said that it would be more convenient to determine the point at or after trial, for the plain reason that, unless leave is granted, there will be no trial of this claim at all. The interlocutory considerations therefore reinforce the conclusion that leave should be granted.

[54] In conclusion, I am satisfied that the applicant has established a *prima facie* case, with a real prospect of success, that the learned judge has erred in law; that the intended appeal raises a question of importance upon which a decision of this court would be to the public advantage; and that the considerations relevant to interlocutory appeals suggest that leave

[25] Aldi Stores Ltd v WSP Group PLC and others [2007] EWCA Civ 1260.

should be granted. I would accordingly grant leave to appeal the decision to strike out the cheque claim.

[55] The applicant also seeks a stay of the learned judge's order pending the determination of the intended appeal. The grant of a stay pending appeal does not automatically follow from the grant of leave to appeal. In order to grant a stay, the court must first be satisfied that the order or proceedings in the court below are capable of being stayed. In this case, the effect of the order striking out the cheque claim was to bring those proceedings to an end in the High Court. That order is not executory in nature, and there are no existing proceedings in the High Court. Therefore, the main order, which is the subject of the appeal, is not amenable to a stay of execution, and there are no proceedings which can be stayed. The costs order imposed by the learned judge is executory and is capable of being stayed pending the outcome of the appeal.

[56] I now turn to Civil Application No. 8 of 2025.

Civil Application No. 8 of 2025

[57] By Application No. 8, the applicant seeks leave to appeal the learned judge's refusal to strike out the trespass claim or enter summary judgment.

[58] The applicant had applied in the court below to strike out the claim form and statement of claim as an abuse of process, or as disclosing no reasonable grounds for bringing the claim, alternatively for summary judgment on the basis that Ms Yan had no real prospect of succeeding on the claim. The principal complaint underlying both limbs was that Ms Yan's witness statement contained inadmissible hearsay, without which she would have no evidence to prove her claim, and that it introduced allegations of fraud, or forgery, which had not been pleaded.

[59] The learned judge refused the application on the basis that the court had previously dealt with the parties' witness statements and the objections to them, and that the case was set for trial where any testimony based on hearsay could "be given due weight". As to the

complaint that fraud had not been pleaded, he observed that in the relevant paragraphs of her witness statement Ms Yan denied signing an agreement, which he considered "consistent with the statement of claim", and he held both objections to be unsuccessful, seeing "no reason to take the extreme measure of striking out the claim".

[60] As to summary judgment, the learned judge held that there was "no justification to grant summary judgment in the defendant's favour without testing the testimonies of the parties". He noted that the claimant relied upon an oral consignment agreement, that the defendant relied upon a written agreement whose authenticity the claimant denied, and that an expert had been summoned to give evidence on the authenticity of the signatures. There was, he concluded, "a considerable controversy to be resolved at the trial", and he was "unable to hold that the claimant has no prospect of succeeding at the trial". He accordingly declined the application, with costs.

[61] The applicant contends that, in so ruling, the learned judge committed errors of law. The proposed grounds of appeal collectively advance two main complaints. The first is that Ms Yan's witness statement consists largely of inadmissible hearsay, and that the learned judge erred in permitting the claim to proceed to trial upon such material, rather than striking the offending passages or the claim. The second is that Ms Yan's denial of her signature, and the summoning of a handwriting expert, amount in substance to a case of fraud or forgery which was never pleaded or particularised as the rules require, and that the learned judge erred in allowing that case to be advanced through evidence rather than pleading.

[62] Reduced to its essentials, the applicant's case is that the learned judge ought to have held that, stripped of inadmissible hearsay and of an unpleaded case of forgery, Ms Yan's claim had no real prospect of success and should have been struck out or summarily dismissed.

[63] I have closely examined these submissions against the applicable law, and I am not convinced that the applicant has met the threshold for leave to appeal.

[64] It is well established that hearsay is not inadmissible in civil proceedings. Objections to hearsay evidence in civil proceedings are often treated as matters of the weight rather than to its admissibility. Questions of weight are quintessentially matters for the trial judge. The

learned judge's observation that hearsay testimony would be "given due weight at the trial" was entirely consistent with settled practice and cannot be criticised. The presence of hearsay in a witness statement does not, without more, establish that the pleaded claim discloses no reasonable ground or has no real prospect of success. To strike out a claim on that basis, before trial, would be to pre-empt the assessment of weight which the trial judge is required to perform. In these premises, I do not consider it reasonably arguable that the learned judge erred in declining to do so.

[65] I similarly do not find the applicant's submissions regarding fraud to be arguable. Ms Yan's statement of claim is a pleading in trespass. She pleads that she and her husband entered into an oral consignment agreement with the applicant on 25th January 2021, on terms that unsold stock would be retrieved; that the applicant left 2,166 cases of Blue Pirate Beer and other chattels upon her warehouse premises and refused to remove them; and she claims damages for trespass, an injunction for the removal of the goods, compensation for the use of the warehouse, and costs. The statement of claim makes no mention of any written agreement, contains no allegation that her signature was forged, and pleads no fraud. The written agency agreement entered the litigation only through the applicant's own amended defence, which denied the oral agreement, asserted a written agency agreement, and exhibited it. Ms Yan asserts, in her witness statement, and nowhere else, that she never signed any written agreement, and that the agreement and the signature upon it are "fraudulent", giving particulars to the effect that she signs Belize business documents with an English rather than her Chinese signature, that her Chinese signature comprises three characters whereas the signature on the agreement bears two, and that the style of the signature is not hers.

[66] There is some merit to the applicant's argument that an allegation of fraud, and in particular of forgery, must be pleaded and particularised, and that a party may not deploy a witness statement to advance, in evidence, a positive case of forgery which its statement of case does not contain. Ms Yan's witness statement does not merely deny that she signed; it affirmatively asserts that the agreement and the signature are fraudulent, and particularises why. To that extent the learned judge's characterisation of those passages as doing no more

than denying the agreement, and as "consistent with the statement of claim", is itself open to some challenge.

[67] However, what is crucial is that fraud or forgery is not an element of Ms Yan's cause of action. Her claim is in trespass, founded upon an oral arrangement. The authenticity of the written agreement became material only because the applicant chose to raise and rely upon that agreement in its defence. It does not follow, however, that her claim should have been struck out or summary judgment entered before trial. Whether her evidence strays impermissibly beyond her pleadings or is a legitimate response to the written agreement raised in the defence is a question best resolved by the trial judge, who will have the pleadings and the whole of the evidence before him.

[68] More globally, I wish to emphasise the court's well-known preference for dealing with claims on their merits, and the general disposition against terminating claims by way of a summary proceeding in the absence of a "knock-out blow". If any authority is needed for this proposition, the decision of **Barbados Rediffusion Services Limited v Mirchandani**[26] suffices. Nothing prevents the applicant from renewing, before the trial judge, its objections to the admissibility of particular passages of the witness statements being relied on by the other side, or its contention that Ms Yan should not be permitted to advance at trial a case of fraud or forgery which has not been pleaded. Those are matters for the trial court, where they properly belong.

[69] Therefore, I am of the view that the applicant has not shown that the asserted errors give the intended appeal a real prospect of success. Even if I am wrong on the merits of the intended appeal, I would still hold that leave to appeal should be refused because, in my judgment, the additional considerations relevant to interlocutory appeals, identified in **Belize Telemedia Limited v Attorney General et al,** strongly suggest that leave should be refused in this case.

[70] The learned judge's order refusing to strike out or enter summary judgment on the trespass claim did not dispose of the claim. The learned judge's order permitted the trespass claim to

[26] CCJ Judgment delivered on 16th March 2006.

proceed to trial. The case had proceeded far into its procedural lifespan. Witness statements had been exchanged, pre-trial memoranda filed, and expert evidence directed. As the learned judge correctly found, the admissibility and weight of the hearsay, the true scope of Ms Yan's pleaded case, the significance of the handwriting expert's evidence, and whether that evidence strays beyond the pleadings, are all complaints that can be raised, ventilated and ruled upon at the trial, by the trial judge who will have the whole of the evidence before him.

[71] It would be more convenient to determine those matters at or after trial than upon an interlocutory appeal. If this court were to permit an interlocutory appeal, it would unnecessarily imperil the trial of the claim by requiring this court to resolve matters that could have been addressed at trial. This would unnecessarily disrupt the trial process (which was nearing completion) with an appeal, in circumstances where an appeal before this court would not have been the only convenient avenue for ventilating the applicant's grievances. In my view, the circumstances do not suggest that permitting an interlocutory appeal at this stage would be worthwhile.

[72] It follows that, even giving the applicant the benefit of the assumption that its complaints are arguable, the applicant has not satisfied the requirements for the grant of leave. I would therefore refuse leave to appeal in Application No. 8 of 2025.

Conclusion

[73] For all the reasons I have given, I am satisfied that the notice of preliminary objection should be dismissed. Leave to appeal should be granted in relation to Civil Application No. 7 of 2025, and the application for a stay made in that application should be refused. Civil Application No. 8 of 2025 should be refused in its entirety.

[74] On the issue of costs, the applicant was successful in pursuing Civil Application No. 7 of 2025. Therefore, the usual order should be made that the costs of that application shall be costs in the appeal. The applicant, however, failed in advancing Civil Application No. 8 of 2025. Ordinarily, the respondents would have been entitled to recover their costs incurred in resisting. However, given that they failed in advancing their preliminary objection to that

application, the appropriate order, in my view, would be that each party in that application should bear its own costs. Such an order would justly and proportionately reflect the shared successes and failures on both sides in relation to the applications.

[75] Accordingly, I would make the following orders:

1. The respondents' notice of preliminary objection filed on 3rd November 2025 is dismissed.

2. In relation to Civil Application No. 7 of 2025:
   (i) Leave is granted to the applicant, Caribbean International Brewery Company Limited, to appeal against the decision of Mansoor J dated 15th May 2025.
   (ii) The applicant shall file a notice of appeal within 21 days of the date of this order.
   (iii) The application for a stay of execution of the learned judge's decision is refused save with respect to the order for payment of costs which is stayed, pending the determination of the appeal.

3. Civil Application No. 8 of 2025 is refused.
4. Costs of Civil Application No. 7 of 2025 shall be costs in the appeal.
5. Each party in Civil Application No. 8 of 2025 shall bear its own costs.

Peter I Foster, KC
Justice of Appeal

[76] I concur.

Marguerite Woodstock Riley, KC
Justice of Appeal

[77] I concur.

Sandra Minott-Phillips, KC
Justice of Appeal