

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM NO. BVIHC (COM) NO. 58 of 2019

BETWEEN:

**[1] ALEXANDER LOWER
[2] SIMON CONWAY
(in their capacities as Joint Receivers)**

Applicants

and

SANG CHEOL WOO

Claimant/First Respondent

and

**CHARLES C. SPACKMAN
(aka Yoo Shin Choi)**

Defendant/Second Respondent

Appearances:

Mr. Merrick Ricardo Watson and with him Dr. Kamille Adair Morgan of Kobre & Kim (BVI) LP, for the Applicants and the Claimant/First Respondent

No appearance was entered on behalf of the Defendant/Second Respondent

2026: June 10.

JUDGMENT

[1] **Wallbank, J [Ag.]:** This is the judgment of the Court on an application ('the Application') filed on 6th May 2026 by Mr. Alexander Lower and Mr. Simon Conway

(‘the Receivers’) for an order discharging and replacing Mr. Conway as a court-appointed receiver. The Application was made pursuant to section 24(1) of the Eastern Caribbean Supreme Court (Virgin Islands) Act¹ (‘the Supreme Court Act’), Part 51 and rule 26.1 (2) (y) of the Civil Procedure Rules (Revised Edition) 2023 (‘CPR’), and the Court’s inherent jurisdiction. The purpose of this written judgment is to articulate the bases and principles for such receivership replacement. Intuitively, a natural reaction is that it must be possible without significant complexity, but the legal basis is not so self-evident.

[2] The Application was heard on 10th June 2026, and it was granted. At the hearing of the Application, learned Counsel for the Receivers, Mr. Watson, submitted to the Court that there appears to be a lacuna in section 24 (1) of the Supreme Court Act and CPR Part 51 insofar as neither provision speaks to the process by which a receiver appointed thereunder is to be discharged from office upon retirement, death or other exigent circumstance affecting his ability to continue in office or to discharge his functions. Counsel invited the Court to find that in such circumstances it must draw on the reserve fund of powers under its inherent jurisdiction to do that which is necessary, just or equitable.

[3] Mr. Watson also contended that it is lamentable that in a jurisdiction where receivers are frequently appointed under section 24 (1) of the Supreme Court Act and Part 51 of the CPR, his research could not find a decision of this Court dealing with an application for discharge based on the pending retirement or death of a receiver. Consequently, he invited the Court to put its reasons for granting the Application in writing and I now do so since the Application presents a timely opportunity for the Court to reexamine the scope and utility of its general or inherent powers, particularly where statute or procedural rules provide an incomplete or no answer to a legal problem.

¹ Cap. 80.

1. BRIEF FACTUAL BACKGROUND

- [4] The factual circumstances which prompted the Application are quite straightforward. The Receivers were appointed by order of the Court dated 12th May 2025 as joint receivers in aid of equitable execution of the default judgment obtained by the Claimant on the present Claim against the Defendant ('the Default Judgment'). As prefaced earlier, their appointments were made pursuant to the Court's power under section 24(1) of the Supreme Court Act, Part 51 and rule 26.1 (2) (y) of the CPR, and its inherent jurisdiction.
- [5] Mr. Conway is now intending to retire from his professional practice. As such, he wishes to be discharged from his appointment as a receiver. The Default Judgment, however, is yet to be satisfied and so the matters which warranted the appointment of the Receivers persist and, as Mr. Conway has stated in his evidence, the work which the Receivers have been carrying out since their appointment just over a year ago will need to continue after his retirement. The Receivers, therefore, also seek an order appointing a new receiver, Mr. Jess Shakespeare, in Mr. Conway's place.

2. DISCUSSION

- [6] The jurisdiction of the Court to appoint a receiver is clearly set out in section 24(1) of the Supreme Court Act and the applicable principles, which arise from section 24(1) itself and rule 51.3 of the CPR, are well traversed in the jurisprudence of this Court (see *e.g.* the decision of Adderley J (Ag) in **Jinpeng Group Ltd v Adriaan Zecha et. al**).² There is, however, no express basis in section 24(1), CPR Part 51, or elsewhere in the Supreme Court Act, for the Court to exercise its power to remove or discharge a receiver (except where he has committed a default with respect to his account).³
- [7] During his oral submissions, Mr. Watson referred the Court to the limitations of CPR 51.9, which applies only where there is some default by a receiver, such as where

² BVI HC (COM) 47 of 2016 (unreported, delivered 17th December 2018).

³ See CPR 51.9.

the receiver fails to submit an account by the date ordered by the Court. In those circumstances, an application may be made for the Court to fix a hearing for the receiver to show cause for his failure. At that hearing, CPR 51.9(5)(b) provides, the Court may give directions for the discharge of the receiver.

- [8] By way of contrast, Mr. Watson drew the Court's attention to Part 69 of the Civil Procedure Rules of England and Wales ('English CPR'). English CPR 69.2(3) provides:

"The court may at any time –
(a) terminate the appointment of a receiver; and
(b) appoint another receiver in his place." (Emphasis added).

Additionally, English CPR 69.10 prescribes that a receiver or any party may apply to the court for the receiver to be discharged 'on completion of his duties'. The editorial note in the **White Book** 2026, Vol. I relating to rule 69.11, which deals with orders discharging or terminating the appointment of a receiver, states that rule 69.10 is not prescriptive or exhaustive as to the circumstances in which an application to discharge a receiver's appointment may be made, and such an application is not limited to cases where the receiver has completed his duties.

- [9] I note that the English CPR makes separate provision in its rule 69.9 for the termination of the appointment of a receiver where there is non-compliance by the receiver with any rule, practice direction or direction of the court. Like CPR 51.9, English CPR 69.9 empowers the Court to convene a hearing for the receiver to explain his non-compliance and an order terminating the appointment of the receiver may be made at that hearing. Our CPR does not, however, have a comparable provision to English CPR 69.2(3).

- [10] It is possible to imagine circumstances in which a court-appointed receiver may need to be discharged, or his appointment terminated, on his own application or on the application of some other interested party, outside of the limited circumstances prescribed in CPR 51.9. A receiver may need to be discharged, for example, where he is incapacitated by ill-health or where he has died, or indeed (as in the present

case) where he has reached the point of retirement from his professional practice. These illustrations are not, of course, an exhaustive list of the possible circumstances which may arise. Notwithstanding, there appears to be no clear basis in the statutory or procedural rules of this jurisdiction (the 'BVI') for the Court to make an order discharging a receiver or terminating his appointment in any of those circumstances. Nevertheless, such an order would be necessary for the receiver to be properly discharged from his duties.

2.1 The need for an order for discharge

- [11] It is a foundational principle of the law of receiverships that an order of the court is necessary to discharge a receiver or terminate his appointment. The learned authors of **Kerr & Hunter on Receivership and Administration** (22nd edn., Sweet & Maxwell, 2024) observe (at § 13-3) that unless the order appointing the receiver contains a provision for his discharge, such as where his appointment is for a specified period, an application to the court is required to divest the receiver's possession.
- [12] This principle featured prominently in the 1827 decision of the English Court of Chancery in the case of **Thomas v Brigstocke**,⁴ where Sir John Leach MR found that a mortgagee had no right to collect rent with respect to mortgaged premises so long as a receiver was appointed over those premises who had not been discharged.
- [13] In the contemporary context, on an application to terminate the appointment of a receiver after his death under Part 69 of the English CPR, in the case of **Baring v Crestbond Limited**,⁵ the English High Court affirmed that a receiver appointed by the court, whose appointment is not limited in time, may only be discharged by order. At paragraph 14 of that judgment, Freedman J. noted that it appears from the learning that:

⁴ (1827) 38 ER 729.

⁵ [2022] EWHC 2921 (KB).

“(i) As a matter of practice, upon the death of a receiver an application ought to be made immediately for the appointment of a receiver in his place...

(iii) Unless a receiver’s appointment was for a limited time only, a receiver appointed by the court may only be discharged by order...

(iv) Unless the order appointing the receiver contains a provision for discharge, then an application to the court is necessary in order to divest his possession of the assets...”

[14] Freedman J. expressed the view (at paragraph 15) that a reason why an order is required may be because a receivership order has more far-reaching effects than merely appointing a party to act as the court’s officer or agent. A receivership order, to adopt the language of the learned judge, ‘is, in effect, the court taking assets into its own possession’. Generally speaking, a receivership order prevents the parties from themselves dealing with the receivership assets. It follows, therefore, that those effects do not automatically determine on the death, or incapacity or retirement, of the receiver and an order of the court is necessary to alter those effects.

2.2 The Court’s jurisdiction to discharge a receiver

[15] It has already been noted that there is no general statutory or procedural provision in this jurisdiction of the likeness of English CPR 69.2(3) empowering the Court to make an order for the discharge of a receiver or the termination of his appointment outside of the receiver’s default. To my mind, this gap in the statutory and procedural framework governing section 24(1) receiverships is even more evident when it is considered that the **Insolvency Act 2003** (as revised in 2020) (‘the Insolvency Act’) makes specific provision in its sections 122 and 123 for the resignation of a receiver appointed under that Act and for the removal of such a receiver by order of the Court on the application of any person who the Court is satisfied has a legitimate interest in the removal of the receiver.

- [16] In the absence of statutory or procedural guidance, and in circumstances where an order of the Court is necessary, I take the view that the inherent jurisdiction of the Court provides the basis for the Court's power to discharge a receiver appointed under section 24(1) of the Supreme Court Act. More specifically, the Court has an inherent jurisdiction to control the conduct of its own officers, which must logically extend to a power of removal or discharge.
- [17] The inherent residual power of this Court to terminate the appointment of its officers was recognised in **Kensington International Ltd v Montrow International Ltd (In Provisional Liquidation)**⁶ ('Montrow'). In that case, the Court had before it an application for the removal of the provisional liquidator of Montrow International Limited, Mr. Tacon. It was submitted on behalf of Mr. Tacon that the application for his removal was defective because it was made pursuant to section 187(1)(b) of the Insolvency Act, which made provision for the removal of a liquidator rather than a provisional liquidator.
- [18] At paragraph 22 of the judgment, Hariprashad-Charles J. acknowledged that the Insolvency Act did not contain a section equivalent to section 172 of the UK Insolvency Act 1986 which specifically provides for the removal of a provisional liquidator. In the learned judge's view, the absence of an express statutory provision dealing with the removal of a provisional liquidator in the BVI Insolvency Act may have been an oversight.⁷ In that context, the Court ruled that:

"It is common ground that the Court has an inherent residual power to remove a provisional liquidator. In *Deloitte & Touche AG v Christopher D. Johnson and Another* [(Cayman Islands) [1999] UKCP 25 (10 June, 1999)], Lord Millet who delivered the decision of the Board stated that as liquidators of the company, the respondents are officers of the Court. The Court's inherent jurisdiction to control the conduct of its own officers is beyond dispute.

The Act does not contain an express provision for the removal of a provisional liquidator. However, it is clear that the Court has an inherent jurisdiction to control the conduct of a provisional liquidation. Accordingly,

⁶ BVIHCV2007/0041 (12th November 2007).

⁷ I note that with the 2020 revisions to the Insolvency Act, section 173 of the Insolvency Act now makes express provision for the termination of appointment of a provisional liquidator.

a provisional liquidator, in general terms, operates under the discretion of the Court [See *Re BCCI No. 2* [1992] B.C.L.C. 579].”⁸ (Emphasis added).

- [19] To put it briefly, where the Court appoints an officeholder who operates at the discretion and under the control of the Court, the Court retains an inherent residual power to regulate that office through the power of removal or termination of appointment.
- [20] This principle was affirmed by the Judicial Committee of the Privy Council in **Deloitte & Touche A.G. v Johnson and Another** (*‘Deloitte’*),⁹ a decision on an appeal from the Court of Appeal of the Cayman Islands, and which was relied on by Hariprashad-Charles J. in **Montrow**. The Privy Council in **Deloitte** was concerned with an application for the removal of liquidators who were appointed as voluntary liquidators, but whose appointment was subsequently continued subject to the supervision of the court. With respect to the application for removal, Lord Millett, who delivered the judgment of the Board, noted that the liquidators held positions as officers of the court and that ‘[t]he court’s inherent jurisdiction to control the conduct of its own officers is beyond dispute’.¹⁰
- [21] In my judgment, the inherent power of the Court to control its officers through removal or termination of appointment found to apply to provisional liquidators in **Montrow** and to liquidators in **Deloitte**, equally applies to court-appointed receivers as another category of court officers. That receivers are equally situated as officers of the court was declared to be settled law by our Court of Appeal in **Jtrust Asia Pte Ltd v Mitsuji Konoshita and Another**.¹¹
- [22] As a general matter, the powers of the Court arising from its inherent jurisdiction are central to the proper administration of justice. This is particularly so where, as on the present Application and as in **Montrow**, statutory provisions and rules of court

⁸ *Kensington International Limited v Montrow International Limited (In Provisional Liquidation)* BVIHCV2007/0041 (unreported, delivered 12th November 2007) at paras. 28 and 91.

⁹ [1999] 1 WLR 1605.

¹⁰ *Deloitte & Touche A.G. v Johnson and Another* [1999] 1 WLR 1605, at p. 1612 per Lord Millett.

¹¹ BVIHCP2020/0022 (unreported, delivered 31st May 2021) at para. 30 (Blenman JA).

provide an incomplete toolbox for addressing the legal issues with which the Court is presented. It is precisely in that situation that the Court must be astute as to not resile from exercising its inherent powers.

- [23] In his article (which has received authoritative judicial approval) 'The Inherent Jurisdiction of the Court',¹² Sir Jack Jacob QC, former Supreme Court Senior Master, acknowledged by the English Court of Appeal as a 'master of civil procedure',¹³ described the inherent jurisdiction of the court as 'a most valuable adjunct' to the powers of the Court prescribed in rules of court. As Sir Jack put it:

"The inherent jurisdiction of the court is a most valuable adjunct to the powers conferred on the court by the Rules. The usefulness of the Rules of Court is that they regulate with some precision the circumstances in which the court can apply coercive measures for disobedience of or non-compliance with the requirements of the rules or orders of the court...

On the other hand, where the usefulness of the powers under the Rules ends, the usefulness of the powers under inherent jurisdiction begins. This is shown in three important respects in which the powers arising out of the inherent jurisdiction differ from those conferred by rules of Court. First, perhaps by their very nature, they are wider and more extensive powers, permeating all proceedings at all stages and filling any gaps left by the Rules and they can be exercised on a wider basis..."¹⁴ (Emphasis added)

- [24] In the extant case, although section 24(1) of the Supreme Court Act and CPR 51 precisely regulate how a receiver may be appointed by the Court, they are silent on the question of removal and discharge in circumstances, as here, where a receiver wishes to retire. To be sure, CPR 51 sets out the steps the Court may take where a receiver fails to comply with the requirements of his office with respect to the filing of accounts, but that is where the usefulness of the rule ends. In my considered view, the Court's inherent jurisdiction to control the conduct of a receivership enables it to fill the gaps left by Part 51 relating to circumstances other than the

¹² [1970] Current Legal Problems 23.

¹³ Ebert v Venvil and Another; Ebert v Birch and Another [2000] 484, at p. 496 per Lord Woolf MR.

¹⁴ I.H. Jacob, 'The Inherent Jurisdiction of the Court' [1970] Current Legal Problems 23, at pp. 50-51.

receiver's default which may necessitate the termination of his appointment and his discharge from office.

[25] I hasten to say, however, that the 'inherent jurisdiction of the court' is not an amorphous formulation which permits the Court to expand its general jurisdiction limitlessly. There are important limitations of which the Court must remain cognizant.

[26] In the case of **Chu Kong v David Yen Ching Wai and Others**,¹⁵ for example, the Court of Appeal ruled that the court's power to control the conduct of a liquidator as an officer of the court did not extend to controlling future, unknown conduct of the liquidator.¹⁶

[27] Similarly, in **Deloitte**, the Privy Council found, as a general matter, that where the inherent jurisdiction of the court is invoked, the court must be satisfied that it is acting on the application of a person with sufficient interest to make the application. The Privy Council ruled that:

"It is... incumbent on the court to consider not only whether it has jurisdiction to make the order but whether the applicant is a proper person to invoke the jurisdiction. ...

This does not mean, as the plaintiff submits, that he 'has an interest in making the application or may be affected by its outcome.' It means that he has a legitimate interest *in the relief sought*."¹⁷

[28] I have no difficulty in finding, as I was invited to do by Mr. Watson, that the Receivers are proper persons with the requisite standing to invoke the inherent jurisdiction of the Court to discharge one of the Receivers, Mr. Conway, and to appoint another receiver, Mr. Shakespeare, in his place. I am fortified in my conclusion by the decision of the English High Court in **Christine Patricia Bartlett v Somaia and Others**.¹⁸ There, on an application by a receiver for his own discharge, it was held

¹⁵ BVIHCMAP2018/0019 (unreported, delivered 11th December 2018).

¹⁶ Chu Kong v David Yen Ching Wai and Others BVIHCMAP2018/0019 (unreported, delivered 11th December 2018) at para. 33 (Smith JA (Ag)).

¹⁷ Deloitte & Touche A.G. v Johnson and Another [1999] 1 WLR 1606, at p. 1611 per Lord Millett.

¹⁸ [2020] EWHC 3718 (QB).

that where power is given to a receiver to apply to the court for directions with respect to the carrying out of his functions as a receiver, '[t]hat must apply to an application to discharge the appointment of the receiver.'¹⁹

- [29] While the English High Court had in its contemplation English CPR 69.6, which expressly confers on a receiver a right to apply to the court at any time for directions to assist him in carrying out his function as a receiver, and there is no equivalent provision in CPR 51, it is the usual practice in this jurisdiction for an order appointing a receiver to contain such a right. Indeed, Mr. Watson reminded the Court that paragraphs 26 and 27 of the order dated 12th May 2025 by which the Receivers were appointed gives them the right to apply to the Court at any time for directions in relation to the receivership.

2.3 The discretion to dispense with the need to give security

- [30] As a final matter, Mr. Watson asked the Court to dispense with the need for Mr. Shakespeare to give security for his appointment. CPR 51.4(1) states that the general rule is that a person may not be appointed as a receiver until he gives security for his appointment. CPR 51.4(2) gives the Court a discretion to dispense with security. In construing the equivalent provision in Part 51 of the Jamaica Civil Procedure Rules, the court in **Madam 'A' v Cash Plus Limited**²⁰ held that the use of the phrase 'may not be appointed' rather than 'shall not' or 'must not' means that a valid appointment can be made without the requirement for security. I accept that, as a matter of principle, this interpretation is correct, and I respectfully adopt it with respect to CPR 51.4.
- [31] In **JTrust Asia Pte. Ltd v Mitsuji Konoshita and others**,²¹ the Court of Appeal recognised that it is reasonable for the court to waive the requirement for security where at least one of the proposed appointees to the office of receiver is a licensed

¹⁹ Christine Patricia Bartlett v Somaia and Others [2020] EWHC 3718 (QB) at para. 10 per Freedman J.

²⁰ Claim No. 2008 HCV01494 (4th November 2011) at paras. 134-135.

²¹ [2022] ECSC J0511-5 at paras. 6 and 16.

insolvency practitioner in the BVI. Mr. Watson, took me to the evidence demonstrating that Mr. Lower, the remaining receiver with whom Mr. Shakespeare would act jointly, is a licensed BVI insolvency practitioner.

[32] Learned Counsel also argued that the circumstances in which the Court may exercise its powers to dispense with security is not exhaustive. He contended that the Court is entitled to consider other factors on a case by case basis which may warrant dispensing with the need for security. To make good the point, he took the Court to Schedule 1 of the 12th May 2025 appointment order which contains an undertaking given by the Claimant to compensate the Defendant or any third-party who suffers loss as a result of the appointment of the Receivers, and invited the Court to find that the cross-undertaking was added reason to dispense with security.

[33] The Court is satisfied that what will amount to a good reason to dispense with the need for security will depend on the factual circumstances of a given case. In weighing the evidence, the fact that one of the proposed appointees is a licensed BVI insolvency practitioner and the claimant has provided a cross-undertaking in damages are two compelling factors that weigh in favour of dispensing with the need for security, but they should not be taken as a closed list.

3. DISPOSITION

[34] I am satisfied that the Court has inherent power to discharge Mr. Conway on the Receivers' application and that the factual circumstances warrant the exercise of that power. I am also satisfied that it is just and convenient for Mr. Conway to be replaced as a receiver, and that his proposed replacement, Mr. Shakespeare, is suitably qualified to assume the role.

[35] In the premises, I am content to make an order in the terms and form of the draft submitted by the Receivers.

[36] I wish to thank learned Counsel, Mr. Watson and Dr. Adair Morgan for their very helpful written and oral submissions which, as I mentioned at the 10th June 2026 hearing, the Court found most insightful and well-reasoned, and for their assistance in preparing a note which the Court found equally helpful in preparation of this written judgment.

Hon. Gerhard Wallbank KC

Commercial Court Judge [Ag.]

By the Court

Registrar

