

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**Claim No. 2024/CLE/gen/00837**

**B E T W E E N**

**ENOS MILLER**

**Claimant**

**AND**

**LARRY GIBSON**

**1<sup>st</sup> Defendant**

**AND**

**LOVANT GIBSON**

**2<sup>nd</sup> Defendant**

**Before:** The Honourable Justice Darron D. Ellis

**Appearances:** The Claimant pro se  
Asha Lewis for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

**Date:** November 6, 2025

**DECISION**

**Application for Leave to Appeal to the Court of Appeal-Court of Appeal Act-Threshold for Granting Leave-Whether the Proposed Appeal Raises an Arguable Point of Law or Has a Realistic Prospect of Success-Failure to Apply the Correct Principles-Appellant appearing Pro Se-Court's Duty to Ensure Fairness-Whether the Intended Appeal is Bound to Fail-Costs.**

1. When an application is made for leave to appeal to the Court of Appeal a decision of a Judge of the Supreme Court in his interlocutory and or case management jurisdiction, does the Court apply

the test established in **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840 or the test established in **Belgravia International Bank & Trust Co. Ltd. and another v Sigma Management Bahamas Ltd. and another** (SCCivAPPnO. 75 of 2021). Additionally, when weighing these factors, it would never be right or proper to deny an appeal that may expose an injustice, particularly if doing so could result in an entirely incorrect decision: **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840; **Belgravia International Bank & Trust Co. Ltd. and another v Sigma Management Bahamas Ltd. and another** (SCCivAPP No. 75 of 2021); **Flowers Development Company Ltd v The Bahamas Development Company Ltd** SCCivApp No. 14 of 2022 at para 10; **Section 21 of the Court of Appeal Act** referred to.

2. It is a recognized legal principle that the burden rests on the Applicant to demonstrate an arguable case or a realistic prospect of success on the proposed grounds for leave to appeal or that the Judge failed to apply the correct principles, or took into account matters which should not have been taken into account, and left out of account matters which were relevant or that the ruling is so plainly wrong that it would be regarded as outside the generous ambit entrusted to a Judge: **Flowers Development Company Ltd v The Bahamas Development Company Ltd** SCCivApp No. 14 of 2022 at para 10; **Belgravia International Bank & Trust Co. Ltd. and another v Sigma Management Bahamas Ltd. and another** (SCCivAPP No. 75 of 2021); **Keod Smith v Coalition to Protect Clifton Bay** (SccivApp No. 20 of 2017); **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840; **Lymington MR in Norwich & Peterborough Building Society v Steed** (1991) 1. WLR 449; **Rodriguez Jean Pierre (Appellant) v The King (Respondent) (Bahamas)** JCPC/2021/0105; **Derek Harold Sands and Lenora Sharell Sands v Finance Corporation of The Bahamas** SCCiv App. No.29 of 2008 referred to.
3. An analysis of the factual and legal evidence and the proposed grounds of appeal, including the failure by the Claimant to identify any error in the Court's decision, the Claimant's application for leave to appeal to the Court of Appeal is dismissed with costs awarded to the Defendants: **Flowers Development Company Ltd v The Bahamas Development Company Ltd** SCCivApp No. 14 of 2022; **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840; **Keod Smith v. Coalition to Protect Clifton Bay** (SccivApp No. 20 of 2017); **Linotype-Hell Finance Ltd. v Baker** [1993] 1 WLR 321; **Matthew Sewell v Attorney General of The Bahamas et al**

(2017/CLE/gen/01181; **English v Emery Reimbold & Strick Ltd** [2002] EWCA Civ 605; **GKN Group v Revenue and Customs Commissioners** [2012] EWCA Civ 57; **Yvonne Rahming v Super Value Food Stores Limited and another** [2017] 2 BHS J No.; **Ellis v Allen** [1914] 1 Ch 904; **Precious Thompson-Curry v Attorney General of The Commonwealth of The Bahamas et al** 2022/CLE/gen/868; **Rankine v Garton** [1979] 2 All ER 1185) relied upon.

**HELD:** The application for leave to appeal to the Court of Appeal is dismissed. The Court finds that the decision was not plainly wrong and that the proposed grounds of appeal revealed no realistic prospect of success and were bound to fail. Costs are awarded to the Defendants, to be summarily assessed if not agreed.

**Ellis J**

### **Introduction and Background**

- [1.] The Claimant initiated this action through a fixed date claim filed on September 18, 2024. The Claimant alleges that, as a result of a traffic accident caused by the negligence of the 2<sup>nd</sup> Defendant, he, the Claimant, suffered a severe brain injury, damage, and loss, and seeks damages for the injury and losses suffered.
- [2.] The Claimant claims that the accident occurred on February 9, 2023. According to the evidence before the Court, in respect of the accident, the 2<sup>nd</sup> Defendant is charged before the Magistrate's Court with being at fault for the accident, and the Claimant is charged with driving whilst not covered by third-party risk of insurance.
- [3.] On October 29, 2024, the Defendants filed a Defence contesting liability.
- [4.] At the hearing on June 23, 2025, the Court ordered that the Claimant's fixed date claim continue as if filed as a standard claim form.
- [5.] On June 27, 2025, the Claimant filed a Notice of Application for an interim payment of \$25,000 pursuant to Part 17 of the CPR and for case management directions.
- [6.] On July 31, 2025, the Court considered the Claimant's interim payment application, delivered an oral ruling denying the application, and issued case management directions. The Court later delivered written reasons on November 25, 2025.
- [7.] On September 4, 2025, the Claimant filed a Notice of Motion seeking the Court's leave to appeal the Court's decision to deny its application for an interim payment and to

issue case management directions pursuant to Section 11 (f) (ii) of the Court of Appeal Act and Rule 27 of the Court of Appeal Rules.

[8.] On November 6, 2025, this Court, in an oral decision (second decision), denied the Claimant's application for leave to appeal. The Court now provides written reasons for its second decision, which are set out below.

[9.] What is before this Court is an application for leave to appeal from an interlocutory decision denying an interim payment and subsequently issuing case management directions.

[10.] The Court's decision of July 31, 2025 reads:

*1. The interim payment application is denied.*

[11.] The Court further gave case management directions as follows:

1. The parties are to file and exchange their respective Lists of Documents on or before September 1, 2025;
2. The Claimant is to file and serve an agreed and non-agreed Bundle of Documents on or before September 30, 2025;
3. Witness Statements are to be sworn, filed and used as evidence in chief and exchanged by the parties on or before October 20, 2025;
4. The Parties are to file all pre-trial applications by October 30, 2025;
5. The Parties are to file a statement of facts and issues by November 7, 2025;
6. The Claimant is to file a trial bundle consisting of pleadings, orders and witness statements by December 1, 2025;
7. Parties are to serve and exchange opening submissions by March 2, 2026;
8. Pre-Trial Review is fixed for hearing at 10:00 a.m. on March 9, 2026;
9. The Trial of this matter is fixed for hearing at 10:00 a.m. on March 18, 2026 at 10:00 a.m.

## **ISSUES**

[12.] The issues for the Court's determination are as follows:

- Whether the Claimant has satisfied the criteria for the grant of leave to appeal, namely whether the proposed appeal discloses a real prospect of success, raises a question of law of general public importance, or demonstrates that the decision under challenge was plainly wrong.

- [13.] The Claimant, in his Notice of Motion filed on September 4, 2025, supported by the affidavit of the Claimant filed on September 9, 2025, and made pursuant to Section 11 (f) (ii) of the Court of Appeal Act and Rule 27 of the Court of Appeal Rules, states as follows:

*TAKE NOTICE that this Honorable Court will be moved before The Honorable Mr. Justice Darron Ellis on the                      day of                      A.D. 2025 at                      o'clock am/pm, Or so soon thereafter as the Claimant can be heard, Pro Se for the above named Claimant for an Order pursuant to Section 11 (f) (ii) of Appeal Act and the Court of Appeal Rule 27 [5] to appeal the dismissal of the Claimant's interim payment application and Case Management Conference Order of The Honorable Mr. Justice Darron Ellis on the 31<sup>st</sup> day of July, A.D., 2025 a decision in favour of the First and Second Defendants and that may the Claimant be granted leave to appeal to the Court of Appeal:*

- [14.] The Notice lists 32 grounds of appeal, many of which appear to be prolix, irrelevant, and repetitive. Only the grounds raising a point that properly addresses the second decision of the Court would be fully considered.

### **Evidence**

- [15.] The grounds are adopted in the supporting affidavit of the Claimant filed September 9, 2025, which did not exhibit a draft Notice of Appeal.

### **Submissions of the Claimant**

- [16.] At the hearing of the application for leave to appeal to the Court of Appeal, the Claimant did not provide the Court with any written submissions addressing the applicable legal principles governing applications for leave to appeal from interlocutory decisions or the Court's case management powers. Instead, the Claimant relied on an affidavit which was prolix and repetitive and which, in substance, read more as a written argument than as a conventional affidavit confined to matters of fact.

- [17.] From a careful review of the Claimant's affidavit, the Court was nevertheless able to distil the substance of the Claimant's contentions. The Claimant asserted that the Court misinterpreted the law and failed to exercise its discretion judicially in dismissing the application for an interim payment. In essence, the Claimant's position was that, having satisfied the threshold requirements for an interim payment, the Court was not entitled to refuse the application. The Claimant further contended, at paragraph 11 of the affidavit, that the Court erred in concluding that medical evidence confirming the alleged injuries was necessary in order to verify any injury and justify the grant of an interim payment in a personal injury claim.

[18.] In addition, the Claimant asserted that the principle of *res ipsa loquitur* applied and that, on this basis, the interim payment ought to have been granted. No explanation was provided as to how that doctrine was engaged on the facts of this case, nor how it satisfied the statutory and procedural requirements for the grant of an interim payment. The Claimant also submitted that the Defence was not properly filed and that this, of itself, justified the making of an interim payment order.

[19.] During the hearing, the Court invited the Claimant to address the applicable legal principles and the established tests governing the grant of leave to appeal. The Claimant candidly acknowledged that he was unfamiliar with those principles and was unable to assist the Court in that regard.

[20.] It should further be noted that, by the Notice of Motion, the Claimant also sought to appeal against the case management directions issued by the Court following the dismissal of the interim payment application. However, no submissions were advanced explaining how the Court is said to have erred in the exercise of its case management powers.

### **Submissions of the Defendants**

[21.] The Defendants submitted that they were not properly served with the Claimant's Notice of Motion and supporting affidavit, and that this explained why no affidavit evidence was filed in response to the application. Counsel indicated that, in the absence of proper service, the Defendants had not been afforded a fair opportunity to prepare documentary evidence for the Court's consideration. Notwithstanding this procedural objection, Counsel for the Defendants nevertheless proceeded to make oral submissions opposing the application for leave to appeal.

[22.] Counsel for the Defendants further submitted that there was no error of law, principle, or discretion on the part of the Court and that the application for leave should therefore be refused. It was contended that the interim payment application failed because the Claimant did not satisfy the statutory and procedural threshold required for such relief.

[23.] In particular, Counsel emphasized that there was no admission of liability on the part of the Defendants and that the Claimant had failed to demonstrate that, if the matter were to proceed to trial, he would obtain judgment for a substantial sum of money. Counsel also highlighted that the Claimant placed no medical evidence before the Court to substantiate the alleged injuries arising from the accident.

[24.] In the circumstances, it was submitted that the Court was correct to conclude that the requirements for an interim payment were not met and to dismiss the application accordingly. It follows that the legal thresholds for granting leave with respect to interlocutory decisions and decisions made in the context of the Court's case management powers have not been met, and therefore leave to appeal should not be granted.

## **LEGAL ANALYSIS AND CONCLUSIONS**

[25.] This Court is considering an application for leave to appeal an interlocutory decision that denied an interim payment and issued subsequent case management directions.

[26.] The relevant test for a leave application in this jurisdiction is set out in **Keod Smith v Coalition to Protect Clifton Bay** SCCivApp. No. 20 of 2017. In that case, *Isaacs, JA*, adopting the guidance from *Lord Wolff* in the case of **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840, noted at paragraphs 23 through 27 of his judgment:

"23. The test on a leave application is whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying: per Lord Woolf in *Smith v Cosworth Casting Processes Ltd* [1997] 4 All ER 840.

24. In a Practice Direction issued by the Court of Appeal in the United Kingdom in 1999 Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) 1999 WLR 2, the following appears:

‘The general test for leave

10. There is no limit on the number of appeals the Court of appeal is prepared to hear. It is therefore not relevant to consider whether the Court of Appeal might prefer to select for itself which appeals it would like to hear. The general rule applied by Court of Appeal, and this is the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples are 13 where a case raises questions

of great public interest or questions of general policy, or where authority binding on the Court of Appeal may call for consideration.

11. The approach will differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal, as will be indicated below. However, if the issue to be raised on the appeal is of general importance that will be a factor in favour of granting leave. On the other hand, if the issues are not generally important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of leave. (Emphasis added)

25 Also in those Practice Directions, the Court of Appeal dealt specifically with appeals from interlocutory orders:

‘Appeals from interlocutory orders:

17. An interlocutory order is an order which does not entirely determine the proceedings: see R.S.C., Ord. 59, r. 1A. Where the application is for leave to appeal from an interlocutory order, additional considerations arise: (a) the point may not be of sufficient significance to justify the cost of an appeal; (b) the procedural consequences of an appeal (e.g. loss of the trial date) may outweigh the significance of the interlocutory issue; (c) it may be more convenient to determine the point at or after trial. In all such cases leave to appeal should be refused.’

26 The Notes to Order 59/14/7 of the White Book 1997 which provides guidance on civil procedure in England, outlines the test for the grant of leave to appeal to the Court of Appeal there –

‘The Court of Appeal will grant leave if they see a prima facie case that an error has been made (see (1907) 123 L.T.J. 202) or if the question is one of general principle, decided for the first time (Ex p Gilchrist Re Armstrong(1886)17QBD 521 per Lord Esher MR at 528) or a question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage (see per Bankes LJ in Buckle v Holmes[1926] 2 KB 125 at p. 127). Generally, the test which the Court applies is whether the proposed appeal has a reasonable prospect of success.’

27 The approach of the English courts has generally been followed by the courts of The Bahamas when considering applications for leave to appeal and for leave to appeal out of time. I have been unable to find a local authority generally discussing the issue of leave to appeal to this Court but I am confident that the factors which call for consideration are much the same as those considered in leave to appeal out of time applications, of which there are many determined by



the Court. ... [46.] I accept the Claimants' submission that the legal test on an application for leave to appeal is that an applicant has to demonstrate that he has some reasonable prospect of succeeding on the appeal. In this case, the Claimants must demonstrate that this court improperly exercised its discretion in making the determination to discharge the injunction.

[27.] The Court finds that the test established in **Smith v. Cosworth Casting Processes Limited** is applicable. *Lord Woolf* explained the test further on page 840:

"The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used, which is that the applicant has no arguable case. Why, however this court has decided to adopt the former phrase is because the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.

The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should, in the public interest, be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarification"

[28.] In light of the fact that the Claimant, by its Notice of Motion, also seeks to appeal the case management directions issued by the Court following the dismissal of the interim payment application, the Court will separately consider whether those directions give rise to any arguable ground of appeal. In doing so, the Court will apply the well-established principles governing appellate interference with a judge's case management powers, bearing in mind the broad discretion afforded to the Court to manage proceedings efficiently and in accordance with the overriding objective.

[29.] The applicable test was articulated by the Court of Appeal in **Belgravia International Bank & Trust Co. Ltd. and another v Sigma Management Bahamas Ltd. and another** (SCCivAPPnO No. 75 of 2021), at paragraph 23. That test was subsequently reaffirmed in **Matthew Sewell v Attorney General of The Bahamas et al** (2017/CLE/gen/01181), where Winder CJ endorsed and applied the same principles at paragraphs 12 and 13.

"12. The AG says that it has good prospects of success on an appeal of these interlocutory decisions. One of the decisions was made in the context of a case management decision, and the other in respect of the decision on liability, where the only witness to give evidence was Sewell"

13. Isaacs JA provides a useful discussion of appeals of interlocutory decisions, made within the context of the judge's case management powers, in the above-cited case of *Belgravia*. He stated at paragraph 23:

It is to be noted that the intended appeal is against an interlocutory decision made within the context of the Judge's case management powers under O. 31A. As such, it is, accordingly, limited only to a request for an appellate review of the correctness (or otherwise) of the Judge's exercise of discretion. This Court must be satisfied that the Judge failed to apply the correct principles, or that she took into account matters which should not have been taken into account, and left out of account matters which were relevant to the strike-out application or that her ruling is so plainly wrong that it would be regarded as outside the generous ambit entrusted to a Judge: *Walbrook Trustee (Jersey) Ltd & Ors v Fattal & Ors* [2008] EWCA Civ 427 and *Darlene Allen-Haye v Keenan Baldwin & Anr* SCCivApp No. 186 of 2019.”

[30.] To properly apply the applicable tests, the Court must consider the individual grounds of appeal relied upon by the Claimant. In the Notice of Motion, the Claimant has identified a total of thirty-two proposed grounds.

[31.] It is necessary to summarise the evidence before the Court at the time of making the decision. The Court accepts that, based on the evidence, a vehicular accident occurred on the specified date between the Claimant and the 2<sup>nd</sup> Defendant. Furthermore, the Court acknowledges that the police investigated the accident and charged the 2<sup>nd</sup> Defendant with being at fault. Additionally, the Claimant was charged with driving without third-party risk of insurance. The Court places no determinative weight on the existence of criminal charges, there being no evidence of conviction or findings of fact relevant to civil liability. Moreover, no evidence was presented regarding the circumstances of the accident or any injuries resulting from it, nor any medical evidence of injuries.

[32.] The Claimant, who appeared Pro Se, filed some thirty-two (32) grounds on which he contends that this Court erred in refusing leave to appeal. Many of these grounds are prolix, overlapping, or repeat earlier complaints in a different language. Several are irrelevant to the criteria governing leave. The Court is not required to rehearse each ground verbatim nor to respond to every contention seriatim. It is sufficient to identify the real issues raised and to give clear reasons for the Court's conclusion: **English v Emery Reimbold & Strick Ltd** [2002] EWCA Civ 605.

[33.] The Court has grouped these grounds as effectively as possible given the circumstances.

**Grounds 2, 3, 4, 5,6,7,11, 12, 13, 14, 15,16 and 28**

[34.] I will dispose of these grounds summarily. The Court has carefully considered the proposed grounds of appeal. However, the grounds advanced do not engage with, or arise out of, the interim payment decision previously made. Instead, they raise new issues and potential applications that were neither before the Court nor the subject of any determination at the earlier hearing.

[35.] As such, the proposed grounds do not challenge any finding actually made by the Court and therefore fall outside the proper scope of an application for leave. In these circumstances, the Court is not satisfied that the proposed appeal grounds have satisfied the threshold to be granted leave. The application for leave to appeal in respect to these grounds must therefore be refused.

**Grounds 1,8, 9, 22,29, and 31**

[36.] Once these grounds are examined, it becomes apparent that the Claimant contends that the Court committed a material error of law in the exercise of its discretion in refusing the interim payment application, on the basis that the Defendants did not raise any preliminary objection to the application and did not file an affidavit in reply.

[37.] In the Court's view, these grounds are without merit. A party is not required to file an affidavit in reply in order to oppose an interim payment application, nor is any preliminary objection required before the Court may determine such an application. The Court's task is to assess whether the Claimant has satisfied the statutory threshold for the grant of interim relief. The Court's refusal of the application was based squarely on that assessment.

[38.] The Claimant advanced the interim payment application on the twin bases that liability had been admitted and that, if the matter proceeded to trial, the Claimant would obtain judgment for a substantial sum of money or for costs. On the evidence before the Court, neither proposition was established. The Court expressly found that there was no admission of liability on the part of the Defendants. Further, the evidence did not permit the Court to determine who was at fault for the accident. In the circumstances, the Court was unable to conclude that the Claimant would be successful at trial, still less that the Claimant would obtain judgment for a substantial sum.

[39.] The principles governing interim payments in personal injury matters are well settled. Where the Court is satisfied that a Claimant would obtain judgment at trial for a substantial sum, the Court may make a cautious and conservative preliminary estimate of the likely award and order an interim payment representing only a fraction of that sum.

However, that exercise presupposes that liability is either admitted or capable of being established on the available material.

[40.] In the present case, the Court was unable to undertake that exercise. The Claimant provided no reliable evidence explaining how the accident occurred. There were no police reports, photographs, recordings, measurements, or other objective materials from which fault could be assessed. In the absence of such evidence, the Court could not determine whether the Defendants were liable for the accident or whether any negligence could be attributed to them at all.

[41.] Even if the Court were prepared to assume that liability might ultimately be established, the Claimant failed to demonstrate that he would recover a substantial sum at trial. The Claimant alleged cerebellar brain injury, dizziness, and headaches, yet placed no medical reports or expert evidence before the Court to substantiate those claims. Without medical evidence, the Court was unable to assess the nature, extent, or seriousness of the alleged injuries or to identify a plausible range of damages.

[42.] In personal injury proceedings, medical evidence is a fundamental requirement, particularly in applications for interim relief. In the absence of such evidence, and without any authorities to guide the assessment of damages, the Court could not make even a conservative preliminary estimate of the likely award.

[43.] Consistent with the authorities, including **Croke v Wiseman** [1982] 1 WLR 71, a Claimant seeking an interim payment must place cogent medical and financial material before the Court. Bare assertions of injury and unsupported claims of liability are insufficient. The Claimant failed to meet that threshold.

[44.] Applying the principles in **GKN Group v Revenue and Customs Commissioners** [2012] EWCA Civ 57 and **Yvonne Rahming v Super Value Food Stores Limited and another** [2017] 2 BHS J No. 114, the Court correctly concluded that the requirements for an interim payment were not satisfied. The Court committed no material error of law. The proposed grounds of appeal, therefore, disclose no real prospect of success and must fail.

### **Grounds 23, 24, and 25**

[45.] Under these grounds, the Claimant contends that the Defendants admitted liability and that the Court therefore erred in failing to recognise such an admission and to award an interim payment. This contention is unsustainable. There was no admission of liability on the part of the Defendants. The Claimant failed to identify any unequivocal admission,

whether of liability or of quantum. As the authorities make clear, an admission must be express, unambiguous, and unequivocal of both negligence and damages, as per **Ellis v Allen** [1914] 1 Ch 904; **Precious Thompson-Curry v Attorney General of The Commonwealth of The Bahamas et al** 2022/CLE/gen/868; **Rankine v Garton** [1979] 2 All ER 1185).

- [46.] In this case, the Defendant's pleadings expressly deny liability. The Court therefore finds that the Defendants made no admission, and an interim payment could not properly be granted on this basis. These grounds do not engage any error of law on the part of this Court, and accordingly, these grounds also fail.

#### **Ground 10**

- [47.] The Court is unable to discern with any clarity the error said to arise under this ground. The only contention that can reasonably be inferred is that, because the Defendants did not expressly plead contributory negligence, the Court ought to have awarded an interim payment.

- [48.] This ground is misconceived and must fail. The absence of a pleaded case of contributory negligence does not give rise to any automatic entitlement to an interim payment. The determinative issue remains whether the Claimant satisfied the legal threshold for interim relief, which the Court expressly found he did not. The Court made no findings on contributory negligence, as none were required for the determination of the interim payment application.

- [49.] In any event, the Defence expressly pleads that the accident was caused or materially contributed to by the Claimant. This ground, therefore, discloses no error of law or principle and affords no basis upon which leave to appeal could properly be granted.

#### **Grounds 11 and 30**

- [50.] The Claimant submits that the case management directions issued by the Court were outside its purview on the basis that the Court lacked discretion to "change" the CPR. The Court is unable to discern the precise error alleged under this ground. No particulars were provided identifying which rules are said to have been altered, nor how the case management directions constitute a departure from the CPR.

- [51.] These grounds are misconceived. The assertion that the Court lacked jurisdiction or authority to issue case management directions following the refusal of the interim payment application is plainly wrong. The Court's case management powers under the CPR are broad, continuing, and inherent in the conduct of proceedings. Those powers are not exhausted or suspended by the determination of an interim application. Once the interim

payment application was dismissed, the proceedings remained extant, and it was both appropriate and consistent with the overriding objective for the Court to give directions to ensure the efficient and proportionate progression of the matter toward trial.

[52.] Further, the Claimant's own interim payment application expressly sought case management directions in the alternative (see page 6, paragraph 8). It therefore ill sits with the Claimant to contend that the Court acted outside its authority in granting the very relief requested.

[53.] Applying the principles articulated in **Belgravia International Bank & Trust Co. Ltd.**, the Claimant has failed to demonstrate that the Court took account of any irrelevant considerations or failed to take into account any relevant matters, or that the exercise of discretion was plainly wrong. This ground discloses no arguable error of law or principle and cannot support the grant of leave to appeal.

#### **Ground 14**

[54.] The Claimant further contends that the Court took account of irrelevant matters and failed to consider matters said to be relevant. However, the Claimant has not identified with any specificity the alleged irrelevant considerations, nor has he pointed to any material factor that the Court is said to have disregarded. Bare assertions of this nature, unsupported by particulars or cogent argument, do not establish an arguable ground of appeal. In the absence of any demonstrated error in the Court's reasoning process, this ground similarly fails to meet the threshold for the grant of leave.

#### **Grounds 17, 18, 20, 21, 26, 27, and 32**

[55.] These grounds are so imprecisely framed that the Court is unable to identify any discernible error of law or fact complained of by the Claimant. The Court has carefully considered these grounds, but the wording does not allow the Court to identify with certainty the legal or factual issue the Claimant intends to raise. Even taking a generous approach to its interpretation, the grounds do not disclose any arguable basis on which leave to appeal could properly be granted. As presently framed, the grounds do not specify any alleged error in the Court's reasoning, and the Court is therefore unable to engage with it in a meaningful way. These grounds, thus, are bound to fail.

#### **Ground 19**

[56.] Ground 19 asserts that the Court misdirected itself in law by "finding that the Defendants would be successful at trial. This ground is based on a misunderstanding of the

Court's decision and of the statutory test for interim payments. In determining an application under the CPR, the Court is required to assess whether the Claimant has shown that he *would obtain judgment for a substantial amount of money* if the matter proceeded to trial. This necessarily involves a limited evaluative assessment of the evidential foundation of the claim; however, the Court did not undertake—any prediction or finding as to whether the Defendants would ultimately succeed at trial.

- [57.] The Court made no express or implied finding that the Defendants would succeed at trial. The ruling reflected that the Claimant had not met the threshold burden imposed by the interim payment regime. In particular, the Claimant failed to adduce any admissible medical or documentary evidence capable of establishing that he would likely obtain a substantial judgment. Ground 19 is therefore misconceived. It identifies no misdirection of law and discloses no arguable basis on which leave to appeal could properly be granted.

### **Conclusion**

- [58.] After thoroughly reviewing the evidence and the submissions from both parties, as well as the proposed grounds for appeal, the Court concludes that the intended appeal does not present any arguable case or realistic prospect of success regarding any issue of law or fact that meets the legal criteria for granting leave, as outlined in **Smith v. Cosworth**. For completeness, the test as laid out by **Belgravia International Bank & Trust Co. Ltd.** was also not met, as the Claimant has not persuaded the Court that, in reaching its decision, it considered any irrelevant matters or failed to consider relevant ones, nor has the Claimant demonstrated that the ruling was plainly wrong.

- [59.] Applying the principles established in the aforementioned cases, the Court is convinced that the proposed appeal lacks merit. It does not raise a question of public or general importance, nor does it present any realistic chance of success.

- [60.] The Claimant having been unsuccessful in the application for leave to appeal, and the Defendants having successfully resisted it. I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore, in this matter, the Claimant shall pay the Defendants' costs, to be summarily assessed if not agreed.

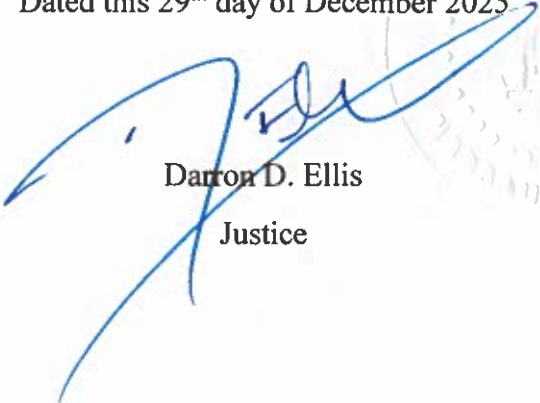
### **ORDER**

- [61.] For the foregoing reasons, the order and directions of this Court are as follows.

**IT IS HEREBY ORDERED THAT:**

1. The Claimant's application by way of Notice of Motion filed September 4, 2025, for leave to appeal is dismissed.
2. The Defendants' costs of the application are to be paid by the Claimant, such costs to be summarily assessed if not agreed.

Dated this 29<sup>th</sup> day of December 2025



Darron D. Ellis  
Justice