

# Sancus Financial Holding Limited, Carson Wen and Julia Yuet Shan Fung v Chad Christopher Holm BVIHCMMAP2023/0025

October 2025

**Court:** Eastern Caribbean Court of Appeal

**Subject:** Interim payment order under CPR Rule 17; '*reasonable proportion*' in interim payments; inability to pay interim payments

**Judges:** Hon. Mde. Ellis, Hon. Mde. Alexander, Hon. Mr. Ramdhani

## Summary

Mr Holm (**Holm**) brought proceedings against the appellants for damages for breach of contract for his investment in the Bank of Asia Project (**Project**). The claim was bifurcated with Holm succeeding on liability.

With liability settled, Holm successfully applied under Rule 17.5 of the Civil Procedure Rules (Revised Edition) 2023 (**CPR**) for an interim payment of damages of an amount considered the '*irreducible minimum*'. The grounds of appeal included that the learned judge wrongly determined the '*reasonable proportion*' of the overall damages likely to be awarded to the respondent at the quantum trial, and erred in concluding that any interim payment should be made, in disregarding the need for Holm to show that he had already suffered loss as a matter of causation, and in failing to take into account the appellants' evidence that they could not afford to pay damages in the amount sought. The appeal was dismissed.

## Further details

Rule 17 confers a broad discretionary jurisdiction to grant interim remedies at any stage including following judgment but prior to the final assessment of quantum. The underlying rationale for interim payment orders is that, where a claimant has established a clear entitlement to a monetary award, the court may properly intervene to prevent injustice due to the delay in the quantification of damages. Therefore, a successful party is not kept out of funds to which they are clearly entitled pending the final resolution of quantum.

Accordingly, under Rule 17.6(1), the court exercises its discretion on a cautious and conservative basis to avoid overpayment while ensuring that a party is not unjustly kept out of their monies. Where the court can safely conclude that a party will recover at least a certain sum, and it is likely to recover more, then that '*irreducible minimum*' may form the basis of an interim payment.

The normal measure of damages for breach of contract at common law is compensatory. The general rule is that damages are assessed as at the date of the breach. However, that rule is not inflexible. If the application would produce injustice, the court may adopt another date more consistent with the compensatory principle.

Damages for breach of contract includes actual loss and lost gain, and '*gain*' does not import any requirement that a claimant must prove an actual sale or realised profit. The deprivation of a contractual entitlement to shares is itself a compensable loss. Therefore, the argument that the absence of a realised gain precludes loss failed.

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A claimant is not required to establish financial necessity, nor is the court bound to consider potential prejudice to a defendant, as a precondition to granting an order for interim payment. The rule is broad, the only express limitations being contained in Rule 17.6(2) (none of which applied here).

At first instance, the judge found that a breach-date valuation would have been unjust, and on the expert evidence (including the appellants' own) determined a conservative minimum value for the respondent's interest (a safe '*irreducible minimum*'). Taking into account that nearly seven years has passed since the breach, during which the respondent had received no damages or reimbursement of extensive legal costs, the grant of an interim award was justified. It could not be said that the decision under appeal was '*plainly wrong*'.

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