



Michaelmas Term
[2026] UKPC 34
Privy Council Appeal No 0118 of 2019

JUDGMENT

**Stephen Anthony Aldridge (Appellant) v Mordaunt
Estates Ltd (Respondent) (Mauritius)**

From the Supreme Court of Mauritius

before

**Lord Sales
Lord Hamblen
Lord Burrows**

**JUDGMENT GIVEN ON
6 October 2026**

Heard on 21 July 2026

Appellant

Alimamode Hajee Abdoula
Manjistha (Rashmi) Ramsaran
(Instructed by Preetam Chuttoo)

Respondent

Joydeep Beeharry
Shadmeene Mootien
Numresh Dreepaul
(Instructed by JC Ohsan Bellepeau)

LORD BURROWS:

1. Introduction

1. This is an appeal against the judgment of the Supreme Court of Mauritius (Court of Civil Appeal) dismissing the appeal of Stephen Anthony Aldridge and upholding the decision of the Supreme Court of Mauritius at first instance, whereby Mr Aldridge, a director of Mordaunt Estates Ltd (“MEL”), was ordered to repay to MEL the sum of £615,000 together with the sum of 2 million rupees (approximately £31,500) as damages with interest.

2. MEL is the plaintiff company and the respondent on this appeal (and, because it is in liquidation, its liquidator, Vasoodayyen Virasami, is the representative of the company). Mr Aldridge is the defendant and the appellant on this appeal. Mr Aldridge represented himself at trial (although his attorney was present). On the appeal to the Court of Civil Appeal and before the Board he was represented by Alimamode Hajee Abdoula.

3. MEL brought proceedings against Mr Aldridge for the recovery of £615,000 allegedly loaned by MEL to Mr Aldridge. It is alleged that the loan contravened section 159(5) of the Companies Act 2001 of Mauritius (“the 2001 Act”) and can therefore be set aside by the company under section 159(7).

4. It is common ground that Mr Aldridge received the £615,000. But, alongside other arguments, he has principally argued that the decisions of the trial judge (Judge R Mungly-Gulbul, dated 17 March 2016: SCR105352 – 1/247/11) and the Court of Civil Appeal (Chief Justice KP Matadeen and Judge Chan Kan Cheong, dated 6 July 2018: SCR 1359 – 6B/12/16) were incorrect because the payments were retrospectively authorised by a unanimous shareholders’ resolution dated 15 February 2010 so that section 159(9) of the 2001 Act applies thereby absolving him from having to repay the £615,000.

5. Although the grounds of appeal were expressed in more wide-ranging terms, the essential questions that the Board has to answer are as follows:

(i) Should the appeal be dismissed because of a preliminary objection raised by MEL?

(ii) Was £615,000 loaned by the company to Mr Aldridge which (subject to the argument about a shareholders’ resolution of 15 February 2010) was contrary to section 159(5) of the 2001 Act?

- (iii) Should Mr Aldridge have been allowed to rely at trial on the shareholders' resolution of 15 February 2010?
- (iv) Should the decision of the Court of Appeal be set aside for apparent bias?
- (v) Should the quantum of damages be set aside as arbitrary?

2. The relevant statutory provisions in section 159 of the 2001 Act

6. For the purposes of this appeal, the relevant subsections in section 159 of the 2001 Act are as follows.

“159 Remuneration and other benefits

...

(5) Subject to subsection (6) a company shall not -

(a) make a loan to a director of the company or any relative or related entity of the director; or

(b) enter, into any guarantee or provide any security in connection with a loan made by any person to any person referred to in paragraph (a).

(6) Subsection (5) shall not prevent a company from -

(a) making a loan to a related company, with the approval of the Board;

(b) entering into a guarantee or providing security in connection with a loan made by any person to a related company;

(c) providing a director with funds to meet expenditure incurred or to be incurred by him for the purpose of the company or for

the purpose of enabling him to perform his duties as an officer of the company;

(d) making a loan in the ordinary course of the business of lending money, where that business is carried on by the company;

(e) making a loan to a director who is engaged in the salaried employment of the company or its holding company, in accordance with a scheme for the making of loans to employees of the company which is approved by the meeting of shareholders of the company in so far as its application to directors is concerned; or

(f) making a loan pursuant to section 81 in respect of a director who holds salaried employment under the company or in a holding company or subsidiary of the company.

(7) Where a loan is made in breach of subsection (5) the loan shall be voidable at the option of the company and the loan shall be immediately repayable upon being avoided by the company, notwithstanding the terms of any agreement relating to the loan.

...

(9) Notwithstanding the provisions of this section, the shareholders of a company may, by unanimous resolution or by unanimous shareholder agreement, approve any payment, provision, benefit, assistance or other distribution referred to in this section provided that there are reasonable grounds to believe that, after the distribution, the company is likely to satisfy its solvency test.

...”

7. Although unnecessary to set it out, the meaning of the “solvency test” in section 159(9) is explained in section 6 of the 2001 Act.

3. Should the appeal be dismissed because of a preliminary objection raised by MEL?

8. A preliminary objection has been taken by MEL. The objection is that, although Mr Aldridge obtained the permission of the Supreme Court of Mauritius (Bissoonauth J) by an order dated 24 April 2026 to continue proceedings against an insolvent company comprising this appeal to the Board, that order was based on two alleged errors of law. It is alleged, first, that the application was made under the incorrect section of the Insolvency Act 2009 and, secondly, that it should not have been granted ex parte without giving the liquidator the opportunity to make representations.

9. That preliminary objection fails because, whether or not errors of law were made, the correct procedure would have been for MEL to appeal to the local appeal court against the order made. It did not do so. There is therefore an unappealed order granting Mr Aldridge permission to continue proceedings by appealing to the Board. The Board cannot go behind that order.

4. Was £615,000 loaned by the company to Mr Aldridge which (subject to the argument about a shareholders' resolution of 15 February 2010) was contrary to section 159(5) of the 2001 Act?

10. It is not in dispute that, during the period 19 May 2008 to 30 January 2009, a total sum of £615,000 was transferred from MEL's account at Barclays Bank into the personal account of Mr Aldridge in four tranches (£80,000 on 19 May 2008; £120,000 on 1 July 2008; £200,000 on 23 September 2008; and £215,000 on 30 January 2009).

11. That those payments were loans, so that the overall loan was £615,000, was allegedly evidenced by two documents (referred to at trial as P2 and P7). Both were signed by Mr Aldridge and acknowledged that £615,000 was owed by Mr Aldridge to MEL as at 30 April 2009. At trial, Mr Aldridge did not dispute the authenticity of P2 but alleged that P7 was a forgery. The difference between the two documents was that, while both acknowledged that £615,000 was owed by Mr Aldridge to MEL, P7 made clear that the payment was a loan because it had been marked that the payment was to be repaid "on demand". The trial judge pointed out that Mr Aldridge had been in possession of P7 ever since the plaint was served on him on 7 June 2011, yet it was only in the course of the hearing that he had come up with the allegation that the document was forged. There was also the oral evidence of the auditor, Yousouf Nabee, to the effect that there was a loan of £615,000 "in the ledgers provided to us [by the company] for audit". Additionally, there was the oral evidence of Sookraj Seechurn, who acted as the company secretary, that the £615,000 was a loan. The trial judge rejected Mr Aldridge's testimony that P7 was a forgery and said the following (at p 12):

“the Defendant’s assertion in court regarding document P7, has no merit and is in my view a last minute fabrication on his part so as to extricate himself from the situation that he found himself in.”

12. The trial judge was clearly entitled to decide, on the evidence, that the payment of £615,000 was a loan. Mr Abdoula submitted to the Board that the payment of £615,000 was “drawings” rather than being loaned but that was not developed further and, in any event, to describe the payment as “drawings” is consistent with it being a loan.

13. The Court of Appeal upheld the trial judge’s finding that the £615,000 was a loan to Mr Aldridge and that she was right to reject the allegation of forgery. It follows that the finding that the payment of £615,000 was a loan to Mr Aldridge by MEL is a concurrent finding of fact and, applying the long-standing practice of the Board, beginning with *Devi v Roy* [1946] AC 508 and confirmed in many cases since (see, eg, *Dass v Marchand* [2021] UKPC 2; [2021] 1 WLR 1788, paras 15–16), there is no justification for the Board to go behind that finding.

14. As the £615,000 was a loan by MEL to Mr Aldridge then, subject to the next question concerning the shareholders’ resolution of 15 February 2010, it was made in breach of section 159(5) of the 2001 Act because Mr Aldridge was a director of MEL.

5. Should Mr Aldridge have been allowed to rely at trial on the shareholders’ resolution of 15 February 2010?

15. The central submission put forward by Mr Abdoula, on behalf of Mr Aldridge at the appeal before the Board, was that by a shareholders’ resolution of 15 February 2010, MEL retrospectively authorised the loan. The £615,000 owed was specified to be the consideration from MEL to Mr Aldridge for the sale to an employee benefit trust, being set up by MEL, of 10% of Mr Aldridge’s shares in MEL. The shareholders’ resolution was as follows:

“12. SALE OF SHARES BY STEPHEN ALDRIDGE

It was RESOLVED that the consideration for the sale to the EBT of the 10% holding of his shares in MEL by Steve Aldridge shall be the sum of GBP 615,000.00, which he acknowledges receiving by way of drawings from MEL, that the pre-emption rights under the constitution in respect of such share transfer be and are hereby waived and that he shall have no obligation to repay any of such drawings to MEL.”

16. The problem with this submission is that the shareholders' resolution was not pleaded by Mr Aldridge. He put in a general denial (what is often referred to as a "general traverse") and there was no mention of this shareholders' resolution. Although Mr Abdoula argued that it was not for the defendant to plead the shareholders' resolution, because the lack of a shareholders' resolution was part of the cause of action to be pleaded by the plaintiff, the Board disagrees. There was a cause of action under section 159(5) of the 2001 Act constituted by the payment of a loan to a director, and it was for the director to establish, applying section 159(9), that that loan had been subsequently authorised by a shareholders' resolution. This was particularly so where the shareholders' resolution came over a year after the loan had been made and could be accurately described as a waiver by the company of money owing to it by Mr Aldridge. In this case, therefore, the shareholders' resolution of 15 February 2010 was clearly being relied on by Mr Aldridge as a defence and it was for him to plead it. Indeed, this was a very obvious point that one would have expected Mr Aldridge to have raised front and central as soon as the company had claimed the repayment of the £615,000.

17. The importance and fairness of the pleading rule is well-illustrated here because, had the shareholders' resolution been properly pleaded, and then been properly tendered in evidence (which it had not been), it would have been open to the company to raise potential objections to that resolution. For example, MEL could have raised the objection that section 159(9) was inapplicable as a defence because the company would be unlikely to satisfy its solvency test. But none of that was raised because the shareholders' resolution was not properly pleaded and to allow it to be relied on at trial would have been unfair to MEL.

18. The trial judge was therefore correct, and certainly entitled, to decide, as a matter of pleading, that Mr Aldridge should not be permitted to rely on the shareholders' resolution. Hence she was correct, and certainly entitled, to rule that Mr Aldridge could not use, or cross-examine on the basis of, that shareholders' resolution.

19. Similarly, the Court of Appeal was entitled to uphold her decision on this point. The reference in its judgment to the "irrelevancy" of the shareholders' resolution of 15 February 2010 is a reference to it being irrelevant because of the failure to plead it. That is made clear by the reference by the Court of Appeal, at p 4, to the submissions of counsel for MEL before the Court of Appeal and those submissions clearly equated the irrelevancy with the failure to plead:

"The unanimous shareholders' resolutions on the 15th of February 2010 (resolution No 12) is irrelevant. It never formed part of appellant's plea and appellant cannot now introduce this new element."

20. In any event, both courts below considered that the shareholders' resolution of 15 February 2010 should have been pleaded, and had not been, by the defence. The Board would be reluctant to go behind the decisions of local courts on a pleading point such as this. The court procedure in Mauritius is pre-eminently a matter for the Mauritian courts.

21. As part of his submissions on unfairness, but more conveniently dealt with here, Mr Abdoula argued that the trial judge had unfairly contradicted herself and misled Mr Aldridge (who was representing himself albeit assisted by his attorney) as to whether he could, or could not, rely on, or cross-examine a witness as to, the shareholders' resolution of 15 February 2010. The Board disagrees. There was no such contradiction or misleading of Mr Aldridge. The trial judge was consistently maintaining her view, reflected in her ruling, that, because of the failure to plead the shareholders' resolution, Mr Aldridge could not rely on it or cross-examine a witness about it.

6. Should the decision of the Court of Appeal be set aside for apparent bias?

22. The well-known test for apparent bias, applied in several cases of the Board including in the Mauritian case of *Lesage v Mauritius Commercial Bank Ltd* [2012] UKPC 41, was laid down in *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357. In his speech at para 103 Lord Hope said:

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”

23. Mr Abdoula relies on what the Court of Appeal said in its judgment at p 3 as evidence of its apparent bias. What the Court of Appeal there said was as follows:

“We note that this is not the first time that this appellant has attacked the integrity of the Judges hearing the several cases lodged by him before our courts. We note equally that the Judicial Committee of the Privy Council has unceremoniously dismissed all his applications for leave against the decisions of those Judges.”

24. However, it is important to recognise that the Court of Appeal was careful to use the phrase “we note”. There is no indication that it relied on those points in coming to its decision. The fair-minded and informed observer would not conclude from this that there was a real possibility that the tribunal was biased.

25. The Board's attention was also drawn to the fact that in a previous case, *Aldridge SA v Mordaunt Estates Ltd* 2014 SCJ 358, the two judges of the Court of Civil Appeal sitting on this case had made disparaging remarks about Mr Aldridge describing him as a "serial litigator". But that was in a different case concerned with different facts and evidence. As an aspect of their judicial oaths, judges are required, and can reasonably be expected, to distinguish between cases. A judge is bound to decide the particular case on the evidence presented in that case. The fair-minded and informed observer would not conclude from that previous case in 2014 that there was a real possibility that the Court of Civil Appeal was biased on the appeal in this case.

26. It is also important that no apparent bias was alleged against the trial judge. This was a complaint targeted only at the Court of Appeal. Yet the relevant findings on which this case turns were those made by the trial judge.

7. Should the quantum of damages be set aside as arbitrary?

27. The trial judge awarded as damages, for the failure to repay the loan of £615,000, 2 million rupees (approximately £31,500) with interest. The trial judge was entitled to take a broad-brush approach estimating as best she could the loss suffered by MEL by being deprived of funds of £615,000. The sum she awarded was well within the margins of her discretion on quantum and there was no error of law. Indeed, at the oral hearing before the Board, Mr Abdoula did not push this objection saying, realistically, that the quantum of damages would essentially stand or fall with the Board's decision on the other questions.

8. Conclusion

28. For all these reasons, the appeal of Mr Aldridge is dismissed.