In The Supreme Court of Bermuda

CIVIL JURISDICITION
COMMERCIAL LIST
2025 no 233

IN THE MATTTER OF OCEANS WILSONS HOLDINGS LIMITED

AND

IN THE MATTER OF SECTION 99 OF THE COMPANIES ACT 1981

RULING ON COSTS OF SCHEME SANCTION HEARING

DATE OF COSTS HEARING: 11 FEBRUARY 2026

DATE OF RULING: 6 MARCH 2026

Appearances:

George Bompas KC of 4 Stone Buildings and *Kevin Taylor* of Walkers Bermuda Limited for Arnhold LLC

Michael Todd KC of Erskine Chambers and *Kyle Masters* of Carey Olsen Bermuda Limited for Oceans Wilsons Holdings Limited

MARTIN J

Introduction

1. The court gave its decision on the sanction of the scheme of arrangement in this matter in relation to Oceans Wilsons Holdings Limited ("OWHL") on 2 December 2025. That decision included a provisional order that the costs of the sanction hearing were to be paid by Arnhold LLC ("Arnhold") on the standard scale to be taxed if not agreed, and a certificate was given for two counsel. The provisional order was to take effect unless Arnhold applied to the court to be heard on the question of costs within 14 days of the

order[1]. Arnhold did so apply, and the matter of costs was later heard by the court on 11 February 2026 at a contested hearing. The court reserved its decision. This is the court's ruling on costs.

Arnhold's submissions

2. Mr Bompas KC submitted on behalf of Arnhold that the court's provisional order was wrong as a matter of principle and referred to the general statement of the relevant principles that apply to costs in relation to schemes of arrangement in a summary given by Snowden J (as he then was) in **Re Virgin Active Holdings Ltd**[2].

3. The relevant passage relied upon states:

   i. In all cases the issue of costs is in the discretion of the court.

   ii. The general rule is the costs under CPR 44.2 will ordinarily have no application to an application under part 8 seeking an order convening scheme meetings or sanctioning a scheme, because the company seeks the approval of the court, not a remedy or relief against another party.

   iii. That is not necessarily the case and hence the general rules under the CPR may apply in respect of individual applications made within scheme proceedings.

   iv. In determining the appropriate order to make in relation to costs in scheme proceedings, relevant considerations may include,

      a. that members or creditors should not be deterred from raising genuine issues relating to a scheme in a timely and appropriate manner by concerns over exposure to adverse costs orders;

      b. that ordering the company to pay the reasonable costs of members or creditors who appear may enable matters of proper concern to be fully ventilated before the court, thereby assisting court in its scrutiny of the proposals;

      c. that the court should not encourage members or creditors to object in the belief that the costs of objecting will be defrayed by someone else.

   v. The court does not generally make adverse costs orders against objecting members or creditors when their objectives though unsuccessful or not frivolous and have been assistance to the court in its scrutiny of this scheme. But the court may make such an adverse costs order if the circumstances justify that order.

   vi. There is no principle or presumption that the court will order the scheme company to pay the costs of an opposing member or creditor whose objections to the scheme have been unsuccessful. It may do so if the objections have not been frivolous and have assisted the court; or it may make no order as to costs. The decision in each case will depend on all the circumstances.

4. Mr Bompas KC submitted that if the court had applied this approach the correct order would have been that OWHL should properly be ordered to pay Arnhold's costs, or at the least that there should be no order for costs.

[1] [2025] Sc (Bda) 123 civ at paragraph 169.
[2] [2021] EWHC 911 Ch at paragraph 29.

5. Mr Bompas KC relied upon the following features of Arnhold's objections in support of his submissions (in summary).

6. The first point was that Arnhold should not have to bear the costs of the adjournment application because his clients were successful in persuading the court to adjourn the hearing so that full submissions could be made and expert valuation evidence could be put in for the court to assess. This was a living example of an objector "stepping up to the plate" instead of shouting his objections from the bleachers, following the guidance given by Snowden J in the **Virgin Active** case.

7. The second point was that the objections were based on independent expert evidence on which Arnhold was entitled to rely, even though the court did not accept that evidence and had some criticisms of it. The objections were not frivolous and assisted the court in ventilating the issues.

8. The third point was that the objections were made by Arnhold both as an investor in its own right but because it has acted for clients for a long time who have had investments in OWHL. Arnhold also put forward the point of view that was held by market participants and commentators that the offer price did not fairly reflect the market value of OWHL's shares and was not in the interests of scheme shareholders.

9. The fourth point was that the evidence concerning OWHL's intentions about investment of the proceeds of the sale of the holding in Wilson Sons SA was not made clear until October 2025 that if the company continued as a standalone entity it would pursue a strategy of investing in the company's investment portfolio. Mr Bompas KC submitted that this went much further than the company had gone in its public statements up to that date, and that this represented a significant change in the company's position.

10. In totality, Mr Bompas KC submitted that Arnhold's objections were reasonably taken, and its opposition was proportionate to the value of the company, and the objections were not rejected as being fanciful or frivolous. Therefore, he urged that the court should apply the approach in **Virgin Active** and award Arnhold its costs of the scheme sanction proceedings (or at the very least) the court should make no order for costs.

OWHL's submissions

11. Mr Todd KC responded (in summary) by submitting that the court in Bermuda has not (to date) adopted the same approach to costs in relation to scheme proceedings, and that the Bermuda court is not obliged to adopt the English approach. He submitted that the cases decided in this jurisdiction take the ordinary approach that the court takes to costs in conventional commercial litigation and cited a number of cases in which the court in Bermuda has awarded the costs of contested sanction hearings to the successful party.

12. In particular he relied upon **APP China Group Ltd**[3] in which Kawaley J as he then was applied the conventional approach where a wide range of objections had been raised. These included objections to class composition, adequacy of information and whether a reasonable creditor (in that case) would approve the scheme. Mr Todd KC pointed out that these were the same types of objection that Arnhold had taken in the present case. Kawaley J indicated that the case was probably the first in which the question of costs liability had been raised in connection with a contested scheme, so he submitted that this case is the

[3] [2003] Bda LR 50

starting point for local precedent on the point. Mr Todd KC also referred to **Highland Crusader Fund II**[4] in which Kawaley J later referred to the distinctive principles that apply in scheme sanction hearing cases, which suggests reference to a different approach, but the exact principles were not discussed or described in detail. However, Mr Todd KC said it may be inferred from some of the cases cited to Kawaley J in that case that the objectors should only pay the additional costs incurred as a result of the objections.

13. Mr Todd KC also referred to **Dominion Petroleum Ltd**[5] where Kawaley J awarded the costs of the contested hearing to the company but disallowed the costs of preparing for the hearing, noting that this may have been over generous to the objector. That case referred to the English decision of **Re BTR plc** in which a number of objections had been taken. Jonathan Parker J rejected the objections but failed to make any order as to costs, and the Court of Appeal upheld the decision but rejected an application for the costs of the first instance hearing because the judge had not addressed the issue of costs in his ruling.

14. Mr Todd KC also referred to other decisions of the Bermuda court involving contested hearings for sanctions for court appointed liquidators to take certain actions, which had been conducted as hostile commercial litigation, and the court awarded costs against the unsuccessful party.

15. Mr Todd KC submitted that the appropriate order would be for Arnhold to pay the costs of the objection, taking the same approach that Kawaley J had taken in **Highland Crusader Fund II** cited above.

16. Alternatively, Mr Todd KC submitted that even if the English standard in **Virgin Active** were to be applied in this case, an award of costs against Arnhold would be justified. He submitted that the type of objections raised in the present case were unjustified. Mr Todd KC submitted that the court should apply its normal approach to costs because (i) the approach taken by Arnhold in the lead up to the sanction hearing was in the nature of ordinary hostile litigation and (ii) the objections as to class composition and a lack of disclosure were ill founded. Some of these objections included other serious matters including a lack of good faith, coercion and failure to observe the duty of candour, all of which were rejected by the court as being without any evidential foundation.

Arnhold's reply submissions

17. Mr Bompas KC responded (in summary) that in the scheme cases in which the Bermuda court had awarded costs on the basis that applies in commercial litigation, there had been a feature of personal or collateral motivation that lay behind the objection, which was entirely absent from the present case. Mr Bompas KC submitted that Kawaley J had particular regard to the fact that the objections were motivated for reasons that were collateral to the scheme. Mr Bompas KC submitted that this element took those cases out of the same category as an ordinary scheme case (such as this) where the objections were not made for any improper or collateral motives.

The court's assessment of which approach to take

18. Dealing first with the issue of general principle, I am persuaded that the approach that the court should take in assessing costs liability in relation to a contested sanction of a scheme of arrangement should follow the guidelines set out in **Virgin Active**. This is for several

[4] [2011] Bda LR 50
[5] [2012] Bda LR 8

obvious reasons. The Bermuda scheme provisions follow the English model, albeit the English scheme provisions have been amended and updated in some respects and the Bermuda sections have not (yet) been amended. However, it would be consistent with ordinary principles of persuasive judicial precedent that the Bermuda court should apply (so far as possible, allowing for variations in local practice and procedure) English principles as to the interpretation and application of the rules and procedures relating to schemes and the adoption and sanction. This has always been the approach that has been taken in the past. This should also include taking the same approach to costs.

19. I am therefore satisfied that Snowden J's guidance should therefore also apply in relation to issues as to costs in relation to contested schemes in Bermuda. I venture to guess that had the **Virgin Active** guidance been put before Kawaley J (as he then was) when those earlier cases referred to were decided, he would likely have been receptive to adopting and applying that guidance in those cases. This may be reflected in his cryptic reference in the **Highland Crusader II** case to the "distinctive principles" that apply in scheme cases in relation to costs.

20. I therefore accept the submissions made by Mr Bompas KC in relation to the approach the court should take, and that the court should have therefore applied the guidance set out in **Virgin Active** when assessing where the burden of costs of the contested Scheme hearing in this case should fall.

Relevant factors

21. The court has therefore re-assessed the issue of costs in the light of the guidance set out in **Virgin Active**. Without repeating all the points made above, I set out below in brief the points made by counsel which address the factors noted in Snowden J's summary of the appropriate guidance.

22. Mr Bompas KC submitted that the objections were not frivolous, but were reasonably taken, supported by credible expert evidence and market commentary, and were of assistance to the court in determining the issues. He submitted further that it would send a chilling message to would be objectors who had genuine concerns about a scheme from presenting those objections if they were at risk of paying the costs of the proceedings.

23. Mr Bompas KC said that the court should actively encourage objections to be taken and referred to Snowden J's analogy of "*stepping up to the plate*" by putting in evidence in support of the objections, all of which Arnhold had done in a sincere effort to assist the court.

24. In the course of his address, Mr Bompas KC also suggested that the court should not punish his client for making reasonable and repeated requests for information in the compressed timescale that the scheme was announced and between the adjourned sanction hearing and the final hearing.

25. Applying these considerations to the **Virgin Active** guidance, he submitted that Arnhold should fall within paragraphs iv. a and b of Snowden J's summary set out above and sought an order that OWHL should pay Arnhold's costs. At a minimum, he submitted that there should be no order for costs which would fall within paragraph vi of Snowden J's summary of the guidance and referred to the unfairness of having to pay OWHL's costs of the sanction hearing since OWHL had to return to court for the sanction in any event.

26. In the alternative to his case that the **Virgin Active** guidance does not need to be applied in Bermuda, Mr Todd KC submitted that the factors referred to in that guidance would still result in an adverse costs order being made against Arnhold. Mr Todd KC submitted that Arnhold conducted their opposition to the sanction hearing in the manner of hostile commercial litigation. He submitted that Arnhold took a number of points which were not supported by any evidence, made serious allegations that there had been a lack of full disclosure, and unsupported allegations of conflict or interest and collateral motives, all of which were rejected by the court.

27. Mr Todd KC submitted (in summary) that these were the same types of objection that had resulted in adverse costs orders in the other cases, and which justified adverse costs order in this case. Mr Todd KC accepted that the court ought to have made some allowance for the fact that OWHL had to return to court for a sanction in any event, and sought an order for the additional costs of the sanction hearing that were occasioned by the objections.

The Court's re-assessment of the factors using Snowden J's guidance

28. The court has considered these submissions carefully and has weighed the guidance in **Virgin Active** in coming to its conclusions. The various factors the court has attached weight to in this assessment are set out below. These factors fall into two categories. The first category relates to the principal ground of objection, namely the fairness of the Exchange Ratio. The second category relates to the various points taken as standalone issues which were raised as objections to the approval of the scheme based on the existence of separate commercial interests on the part of some shareholders who hold cross shareholdings in Hansa.

Fairness of the Exchange Ratio

29. The court accepts that the objections made by Arnhold regarding the Exchange Ratio were sincerely made and reflected Arnhold's commercial assessment of the terms of the Scheme based upon their own expertise and investment experience, and that their view was shared by some independent market commentators.

30. However, in my judgment, their fundamental objection as to 'fairness' was as to the *commercial* terms of the Scheme, namely as to the calculation of the Exchange Ratio, which Arnhold complained would result in a lower 'price' or value exchange for the acquisition of the OWHL shares than could be obtained by the shareholders from a sale of their shares in the market. It is well established that decisions that go to the exercise of what is in the best interests of the shareholders (or creditors) are left to the shareholders (or creditors) to make, not the court. It is therefore not a proper ground of objection to a scheme that the price is lower than might otherwise be possible, or that the terms of the Scheme might have been better[6].

31. The court accepts that the point that was taken was not 'frivolous' in the sense that it was based on a sincere and earnestly held point of view. But it was a point that was not really tenable because the terms of the Scheme were obviously ones which an honest and intelligent member of the Scheme class, acting in their own interests, might reasonably approve. As long as the terms of the Scheme meet that very wide definition, an objection based on commercial terms alone would not justify the court refusing to sanction a scheme that had been approved by the requisite majority of number and value. Arnhold's objection

[6] **Re Telewest Communications plc** [2004] EWHC 1466 Ch.

purely as to 'price' or 'exchange value' had no foundation in legal principle, and therefore no realistic prospect of success.

32. Arnhold's good faith reliance on independent valuation evidence still depended upon the expert's view the fairness as to price or value, not the fairness of the terms of the Scheme as a whole or based on some other element which tainted the overall fairness of the Scheme. Arnhold's expert made suggestions as to what might be a fairer or better scheme based on the comparative values he suggested might be available in some other situation (i.e. a revised scheme structure or a sale). He did not point to any terms of the Scheme to illustrate that the Scheme operates unfairly in some way apart from the question of price or share Exchange Ratio.

33. This is not a case involving more than one class of shareholder which Arnhold's expert reluctantly but fairly accepted. The 'rights in' and 'rights out' were plainly the same. Therefore, no question of one group being treated more favourably than another arises (as may sometimes happen in creditor schemes where there are separate classes sharing unequally in a combined pool of assets, or a cram down that unfairly penalizes one group over another).

34. The result is that the court cannot take any comfort from the submission that the issues ventilated by Arnhold as to comparative market values assisted the court in reaching its conclusions, or that the court benefitted from the additional scrutiny of the terms of the Scheme that resulted from Arnhold's objection as to the fairness of the Exchange Ratio.

Standalone issues

35. In support of the main objection as to the fairness of the Exchange Ratio, Arnhold made a number of other objections. I have referred to these as 'standalone' objections because, while they supported the main theme of unfairness, most if not all of them were substantive objections which would have defeated the Scheme had the court accepted them as valid objections.

36. The first of these was the class issue. The court dealt with that issue in the reasons for the grant of the sanction, so they will not be repeated. The main point is that it is clear from the terms of the Scheme that the 'rights in' and 'rights out' were the same for all shareholders, so the outside commercial interests and possible motivations that were relied upon by Arnhold to divide the classes were irrelevant. This is also a point which is well established in the case law.

37. The second point was the adequacy of the explanatory statement as to the disclosure of HAML's fees and a failure to give a fair presentation of the Scheme to the court at the convening hearing. For the reasons given, this was also not a point that found favour with the court, but its relevance here is that the point does not relate to the fairness of the Scheme, it relates to the requirement to comply with the statutory procedures. On the evidence, this point was rejected.

38. The third point was that there was inadequate time for the shareholders to become registered in their own name to be able to count for both numerosity and value. This point went to the fairness of the Scheme in terms of procedure. However, there was no evidence led in support of the objection. No one complained that they were unable to register in time, not even Arnhold.

39. The fourth point was a suggestion that the shareholders who held cross shareholdings in Hansa had not acted in good faith in voting their shares to approve the Scheme because they were motivated to benefit from their holdings in Hansa and were not voting in the interests of the class. This point was not supported by any evidence. This was related to a suggestion that there was or may have been some coercive effect upon the shareholders, which was also unsupported by evidence.

40. The fifth point was a complaint that the records did not show precisely who voted and that OWHL had failed to present sufficient evidence to be sure that the votes were properly counted. This was linked to a point about fair representation at the Scheme Meeting. These points were also rejected as being unsupported by evidence.

Evaluation

41. There is nothing wrong with any party to litigation taking as many points as they see fit in opposition to the Scheme, nor advancing arguments that they think will be most effective to achieve the result they consider just or in their commercial interests. In ordinary litigation, the risk of running points that are unsupported by evidence, or which are unsuccessful for legal reasons, is the liability to pay costs.

42. The issue is whether the guidance given by Snowden J in **Virgin Active** provides an immunity from that liability because the points are (at least in theory) taken in the cause of a minority who have valid objections to the Scheme on the grounds of an unfairness or a blot which justifies the court in refusing to sanction the arrangement to which the statutory majority have approved.

43. In this case the points that were taken were not supported by evidence, nor were the points based on arguments that were well-founded in the documentary record of the Scheme or its preparation and presentation to the court and the shareholders. The court's decision was that the legal points taken were not supported by the application of well-established legal principles which were fatal to the objections taken.

44. In the light of these features, the court is entitled to take the view that the points taken were in reality deployed as part of a hard-fought hostile commercial litigation strategy. No negative criticism is implied by that assessment, but it affects the court's approach to the assessment of liability in costs.

Conclusions

45. As a result, the court has concluded that, taking into account the guidance set out in **Virgin Active** and applying it to the facts of this case, the court is justified in concluding that Arnhold should pay the additional costs incurred by OWHL as a result of their objections to the sanction of the Scheme.

46. In coming to this conclusion the court has borne in mind and applied the guidance in Snowden J's summary that (iv c) the court should not encourage shareholders [members] to object in the belief that the costs of objecting will be defrayed by someone else (v) the court may make an order in costs against an objecting party if the court considers that the circumstances justify that order (vi) there is no presumption that the company will pay an unsuccessful objector's costs, but the court may do so if the objections have not been frivolous and have assisted the court and (i) in all cases the costs are in the discretion of the court.

47. It is right to acknowledge that the court's provisional assessment did not take into account the costs that would have necessarily been incurred by OWHL in obtaining the sanction. I agree that the ordinary costs of applying to the court for a sanction for the Scheme should be borne by OWHL and should not form part of the costs associated with the objections. The practical difficulties posed by teasing out or estimating what those ordinary costs were or would have been will present significant challenges, not least because that is not what actually happened.

48. Mr Bompas KC suggested in his submissions that if he was successful in showing that the court's provisional costs order was wrong, his client should be entitled to the costs of the contested costs hearing. Unfortunately, I am unable to accede to that submission either.

49. The normal approach to the 'costs follow the event' rule is for the court to decide which party was successful 'in real life' terms in the proceedings or in the particular application concerned. Mr Bompas KC said the right order was that OWHL should pay Arnhold's costs, or there should be no order for costs. The court has not accepted either of those submissions, after having applied the guidance in **Virgin Active.**

50. The court has reduced the provisional order in Arnhold's favour by removing the liability for the ordinary costs of obtaining a sanction which, in fairness to Mr Todd KC, is what he submitted the right order was. The deduction of these ordinary costs of an uncontested sanction hearing is likely to be a very small fraction of the actual costs of the contested sanction hearing overall, so that both in terms of the result and what that result represents, OWHL is clearly the successful party in real life terms. Accordingly, Arnhold must pay the costs of the contested costs hearing as well.

51. Mr Bompas KC also submitted that Arnhold should get the costs of the adjourned sanction hearing on the basis that Arnhold succeeded in getting the adjournment. On that occasion the court ordered that the costs of the adjourned hearing would be the costs in the sanction proceedings overall, and I indicated to Mr Bompas KC at the costs hearing that this might mean that the court could not undo that costs order. But in the end, I think that it is the right order anyway. This is because the objections in respect of which the hearing was adjourned to hear and determine were ultimately unsuccessful.

52. For the avoidance of any doubt, all costs awards in these proceedings are certified for two counsel.

53. OWHL is requested to draw an order in the above terms reflecting the costs ruling.

Dated this 6th day of March 2026

THE HON. JUSTICE MR. ANDREW MARTIN

PUISNE JUDGE