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THE MB&H CIRCULAR

News & Views from McKinney, Bancroft & Hughes

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MB&H maintains Top Tier Ranking in IFLR 1000 2025

The firm has once again been ranked *as a 'Tier 1'* firm in IFLR 1000 2025. Five of our attorneys were also singled out for special mention.

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The firm is once again featured in Chambers and Partners' High Net Worth and Private Wealth Guides.

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Senior Associate Berchel K.L Wislon explores a recent judgement.

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Client Focused. World View.

McKINNEY, BANCROFT & HUGHES is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in the cities of Nassau and Freeport.

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McKINNEY, BANCROFT & HUGHES RANKED ONCE AGAIN AS A TIER 1 FIRM IN IFLR 1000 2025.

We are proud to announce that McKinney, Bancroft & Hughes has once again been ranked as a Tier 1 firm in the 2025 edition of IFLR1000, marking over a decade of recognition by this prestigious global legal directory.

The IFLR1000 is one of the world's most respected legal guides, with rankings based on extensive client feedback and market analysis across multiple jurisdictions.

This year, the guide highlighted the exceptional work of five of our attorneys.

The *Highly Regarded Lawyer* rating is conferred on Senior Partner **John F. Wilson KC,** Consultant **H. Campbell Cleare III** Partner **Kimberley A. Rolle** and Partner **Vanessa L. Smith.**

Partner **Gia R. Sands** has also been elevated from *Notable Practitioner* to *Rising Star Partner*, while Partner Kimberley A. Rolle has once again earned the *Women Leader ranking;* one of only three attorneys in The Bahamas to receive this honour.

Congratulations to our attorneys for their continued excellence, and to the firm for upholding its commitment to legal leadership.

2025 IFLR1000 HIGHLY REGARDED LAWYER — John F. Wilson KC

2025 IFLR1000 HIGHLY REGARDED LAWYER — Kimberley A. Rolle

2025 IFLR1000 WOMEN LEADER / 2025 IFLR1000 HIGHLY REGARDED LAWYER — Vanessa L. Smith

2025 IFLR1000 HIGHLY REGARDED LAWYER — H. Campbell Cleare III

2025 IFLR1000 RISING STAR PARTNER — Gia R. Sands

10+ years of recognition by this prestigious global legal directory.

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MB&H featured in Chambers & Partners 2025 Guides

McKinney, Bancroft & Hughes is proud to contribute to the ***Chambers and Partners High Net Worth Guide 2025.*** Partners Sean N.C. Moree KC, Vanessa L. Smith and Erin M. Hill co-authored the jurisdiction overview, offering insights into why The Bahamas continues to thrive as a dynamic and trusted international financial centre.

Additionally, we are proud to share that the firm has also been featured in the ***Chambers and Partners Private Wealth Guide 2025.*** Once again, Partners Sean N.C. Moree, Vanessa L. Smith, and Erin M. Hill co-authored the Bahamas chapter, offering key insights into the legal and regulatory landscape for private wealth in The Bahamas.

FARQUHARSON J. IN VERNES HOLDINGS LIMITED V. BARRY LEON AND LYFORD HOLDINGS

BY BERCHEL K.L. WILSON

INTRODUCTION

The recent judgement of Farquharson J in Vernes Holdings Limited v Barry Leon and Lyford Holdings N.V. No.2023/CLE/gen/00514 marks a brief interlude in the protracted legal dispute between former corporate shareholders of an international bank. This judgement is instructive on the procedural issues which can arise during service of a claim form on a foreign party under the Supreme Court Civil Procedure Rules ("CPR") [2022].

BACKGROUND

To fully appreciate the importance of this ruling it is necessary to understand certain background information in relation to the dispute between these parties. The dispute which first began in 2017 concerns the compulsory sale of Lyford International Bank ("the Bank") by Lyford Holdings N.V ("Lyford") as majority shareholder of the Bank and the minority shareholder, Vernes Holdings Limited's ("Vernes") claim for breach of the Shareholder Agreement. Both parties participated in an arbitration proceeding in April of 2022 before The Hon Barry Leon, the First Defendant in this Action who served as Arbitrator. The Hon. Barry Leon ultimately handed down a Partial Award on 31st July, 2023 primarily in favour of Lyford, which prompted Vernes to commence this Action. In the substantive Action (which has not yet been adjudicated) Vernes seeks the removal of the Arbitrator and the setting aside of the Partial Award rendered by the Arbitrator. The judgement which is the subject of this article concerns a procedural issue in relation to service of process of the Claim Form and Amended Claim on the Defendants. The McKinney, Bancroft and Hughes team, led by Senior Partner John F. Wilson KC, acted on behalf of Lyford in these proceedings as well as the Arbitration.

RELEVANT FACTS

On 2nd August 2023 Vernes' former attorneys attempted to serve Lyford through its Counsel via email with its Claim Form. Counsel for Lyford indicated that they had no instructions to accept service in this Action on behalf of Lyford and do not agree to service via email. Vernes Counsel indicated that based on the Arbitration Agreement, the parties had agreed that all documents would be served via email to Counsel and as this Action was related to the Arbitration, email service was permitted in accordance with CPR 5.16 (2).

Vernes subsequently amended their pleadings on 18th August 2023 and sent a further email purporting to serve Lyford through its Counsel. Counsel for Lyford reaffirmed that there were no instructions or authorization for service to be effect via email. Lyford subsequently filed an Acknowledgment of Service on a conditional basis on 18th August 2023 and thereafter filed an application pursuant to CPR 9.7(1) and (6) seeking that the service of the Amended Claim Form be set aside on 22nd September 2023. In February of 2024, Vernes changed Counsel and through its new Counsel filed an application seeking (i) validation that service of the Claim Form and Amended Claim Form had been affected by alternative methods; (ii) that in the alternative, service be dispensed with and (iii) that all future documents in the action be effected via email. The First Defendant, The Hon. Barry Leon, has not acknowledged service of the Claim Form and/or Amended Claim Form and has not taken part in this Action to date.

ARGUMENT BEFORE THE COURT

Vernes submissions were, inter alia that by virtue of the Arbitration Agreement, email service was permissible and that there was an agreed position between the parties which therefore was a good reason to validate service. Vernes had also submitted that the emails between Counsel evidenced reasonable steps being taken to serve the documents on Lyford and that as the purpose of service had been effected the Court should not be concerned with technical points. Shortly before the hearing, Vernes submitted an objection to Lyford's application to set aside service on the basis that it was out of time in accordance with CPR 9.7 (5) and thus Lyford has submitted to the court's jurisdiction. During the hearing, Counsel for Vernes confirmed that no actual steps were taken to physically serve Lyford at its registered office in Curaçao and there was no evidence the Arbitration Agreement intended to have such a wide scope.

In response to Vernes' application for validation of service, Lyford maintained that they had not been properly served and that the objection was not merely technical but went to the substantive jurisdiction of the Court over a foreign corporate entity. The Arbitration Agreement did not contain any agreement by the parties to accept service of substantive proceedings by way of email and could not supersede the provisions of the CPR. In support of its position, Lyford relied on the recent judgment of **Schaffer v Smith and Anor [2024] 1 BHS J. No. 162** in support of the position that Vernes ought not to be allowed to fix Lyford with notice of the current proceeding by service on attorneys who acted for it in the arbitration. Lyford submitted that Vernes's objection to its set aisde application was without merit as Lyford, a foreign company, would have been entitled to 30 working days to file its application challenging the jurisdiction in accordance with CPR 7.11 not the normal 28 days prescribed to service within the jurisdiction.

In determining firstly whether the Claim Form and/or Amended Claim Form were served on the Defendants the Court found difficulty in accepting that any term in the Arbitration Agreement intended to allow for electronic service of an originating process in a newly instituted claim and thus it was found that service could not and was not effected in a contractually agreed method.

The Court then moved to consider whether the Forms were validly served by electronic means. It was Lyford submission, which was ultimately accepted by the Court, that the preconditions for electronic service are found in **Practice Direction No.2 of 2023** which mandates that a party must indicate in writing a willingness to accept service by electronic means and the email addresses must be communicated. The Court found that the evidence supported that not only had Lyford's counsel indicated that they were not able to accept electronic service but also that Vernes never enquired whether Counsel for Lyford would be able to accept service in these circumstances and thus there had been no valid service on Lyford by electronic means.

Thirdly, in addressing Vernes' application the Court considered whether the purported service ought to be retroactively deemed good service. Vernes relied on the UK case of **Abela and Others v Baadarani [2013] UKSC 44 and the Jamaican case of MacFarlane v Jackson [2022] JMSC Civ 33** to support their position that there was good reason to validate service given that the purported service was sufficient to bring the proceedings to the notice of the parties. The court distinguished these cases from the case before it on the basis that not only were the operative provisions in the UK and Jamaica were different from the wording of the Bahamian CPR but also given that there was evidence in those cases of attempts to physically serve the party. This was not the case in this scenario. Vernes could not show the court that it had taken any steps to personally serve the claim in accordance with CPR 5.13 and could not prove that it was impractical to serve Lyford personally. Lastly, in considering whether the Court should dispense with service, the Court held that the facts of this case did not fall within "exceptional circumstances" as set out in CPR 7.13 and did not warrant an exercise of the Court's jurisdiction to cure the defects in service.

The Court lastly dealt with Lyford's application to set aside service and Vernes' objection. In answer to Vernes' objection, Lyford brought two central points to the Courts attention, namely that: i) a foreign company was entitled to 30 working days after service to file a defence which is the timeline within which a jurisdictional challenge would also have to be filed and; ii) as Lyford had never been served in accordance with the CPR the time within which to file a defence had never started to run. The Court accepted that the proper timeline would have been 30 working days and not the usual 28-day period given their status as a foreign company.

The Court wholly dismissed Vernes' procedural application to validate its defective service and acceded to Lyford jurisdictional challenge and rightfully set aside the improper service by Verne's with costs to Lyford. Additionally, the Court also commented on the expiration of the Amended Claim Form and the potential corrective measures which the Claimant will have to undertake to get the matter on proper footing. This ruling highlights the importance of compliance with the CPR in procedural matters and the consequences which can result when those rules are not followed.