Judgment 10/2007 **Ogier v Grand Havre Holdings Limited – Royal Court (Civil Action File 205) – 27th April 2007 and 30th April 2007**

(i) Action declared périmée and struck out on 30 May 2006 (See Judgment 24/2006) – ruling delivered on application for costs – costs awarded on the recoverable basis

(ii) Application for leave to appeal to the Court of Appeal – decision under appeal held to be interlocutory and leave therefore required – application refused

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

No. 205

Civil

The 27th day of April, 2007, before Alan Robin Winston Hancox, Esquire, E.G.H., C.B.E., Lieutenant Bailiff; sitting alone.

MAUREEN SYLVIA OGIER

Plaintiff/Respondent

- v -

GRAND HAVRE HOLDINGS LIMITED

Defendant/Applicant

The Lieutenant Bailiff having considered submissions from Advocates N.J. Barnes and M.G.A. Dunster, Counsel for the Plaintiff and Defendant respectively, with regard to paragraphs 3 and 4 of the Defendant's combined applications of 4th March, 2005 and 18th August, 2006, annexed hereto; the Lieutenant Bailiff this day gave his ruling in the form annexed hereto and:-

1) AWARDED costs to the Defendant in the perimé/strike-out proceedings;
2) ORDERED that these should be on the recoverable basis.

S M D ROSS
Her Majesty's Deputy Greffier.

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IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

RÔLE DES CAUSES EN PREUVE

BETWEEN:

MAUREEN SYLVIA OGIER **Plaintiff**

and

GRAND HAVRE HOLDINGS LIMITED **Defendant**

APPLICATION FOR COSTS

The Defendant, whose address for service is c/o Advocate M Dunster of 7 New Street in the parish of Saint Peter Port in the Island of Guernsey hereby applies for an Order that the costs occasioned by and incidental to this matter, which was subject to a successful strike out application as detailed in the Judgment of Lieutenant Bailiff Hancox dated the 30th day of May 2006 be ordered in favour of the Defendant on an indemnity, alternatively a recoverable basis.

Dated 18th day of August 2006

M G A Dunster
Advocate

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IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

RÔLE DES CAUSES EN PREUVE

BETWEEN:

MAUREEN SYLVIA OGIER **Plaintiff**

and

GRAND HAVRE HOLDINGS LIMITED **Defendant**

GRAND HAVRE HOLDINGS ("the Defendant") whose address for service is at 7 New Street in the parish of Saint Peter Port

APPLIES TO THE COURT

For the following Orders:

1. that the Plaintiff's claim became *perimé* on or shortly after 1st March 2002 and that her case is therefore defunct; or

2. if (which is not admitted) the claim has not become *perimé*, or if the Plaintiff successfully applies for it to be restored to the rôle, that in any event the Plaintiff's claim should be struck out for want of prosecution pursuant to the provisions of Rule 36(2) of the Royal Court Civil Rules, 1989; and/or

3. (if the Court does not make either of the Orders sought in paragraphs 1 and 2 above, the Defendant pursues its application made on 20th August 2001, which was adjourned by the Court on 3rd September 2001 until the Plaintiff had taken legal advice under the Legal Aid Scheme) that, pursuant to Rule 48 of the Royal Court Civil Rules, 1989:

    a. the Plaintiff, who resides at The Lodge Laharn, Minane Bridge, in the county of Cork in the country of Ireland, lodge within fourteen days the sum of £43,982.40 with the Greffe as security for the Defendant's costs pursuant to Rule 48(1) of the Royal Court Civil Rules, 1989, the said sum being calculated as set out in the attached Schedule of Costs;

    b. the Plaintiff's case be stayed until such sum is lodged pursuant to Rule 48(2) of the Royal Court Civil Rules, 1989; and

    c. if such security for costs be not lodged within twenty-one days of the date of this order, the proceedings brought by the Plaintiff against the Defendant be dismissed (with costs being awarded to the Defendant) pursuant to Rule 48(2) of the Royal Court Civil Rules, 1989, on the grounds that the Plaintiff is resident out of the jurisdiction, and that she has failed to pay costs as ordered by the Royal Court on 6th August 1999 and by the Court of Appeal on 27th September 2000; and

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4. that, in any event, the Plaintiff pay to the Defendant the costs awarded to the Defendant by the Royal Court on 6th August 1999.

AND the Defendant claims costs on a full indemnity basis.

Dated this 4th day of March 2005

M G A Dunster

Advocate for the Defendant

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IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:

MAUREEN SYLVIA OGIER

Plaintiff/Respondent

and

GRAND HAVRE HOLDINGS LIMITED

Defendant/Applicant

Ruling on Paragraphs 3 & 4 of Defendant's combined Applications of 4th March, 2005, and 18th August, 2006

[1]. On 4th May, 1999, I dismissed the Plaintiff's Application to amend her existing Cause, and, by the same token, to join the Guernsey Brewery as an additional Defendant. On the 6th August of that year I ordered that the costs should follow the event. They have not yet been paid.

[2]. In Paragraph 3 a. of the Defendant's Application of 4th March, 2005, Advocate Dunster, on its behalf, has sought an order for security for costs under Rule 48 of the Royal Court Civil Rules 1989. Sub-paragraphs 3 b. and c. of the same Application, which sought a stay of the action and, in effect, alternatively, dismissal thereof in default of such security being provided, have now fallen away as the action was struck out for want of prosecution in my Ruling of 30th May, 2006. Similarly the application under paragraph 3 a. is in my view no longer appropriate as the action itself has been disposed of on the strike-out application.

[3]. Paragraph 3 of the application also refers to the costs of the Court of Appeal hearing at which the appeal from the May, 1999, decision was dismissed. The Court of Appeal delivered its judgment on the 27th September, 2000, and awarded the costs thereof to Grand Havre. Of course I do not have jurisdiction to make any order in respect of those costs.

[4]. It cannot be gainsaid, however, that Mrs Ogier was present at and well understood the orders for costs that were being made in respect of both sets of proceedings, and, at the conclusion of the appeal Sumption J.A., who presided, asked Mrs Ogier if she had anything to say before the order for costs was made. Indeed in the subsequent hearing before the Court of Appeal on 8th January, 2001, when the Court rejected her application for leave to appeal out of time against the original eviction order, at page 5A of the Judgment, Sumption J.A. cautioned Mrs. Ogier in the following terms:

> **"You have made a number of applications in this dispute and I am not seeking to rule on any application other than the one that you have just made. You must face the fact that if you continue to try to re-litigate points in this way, you are going to find yourself at the receiving end of what mey be expensive orders for**

costs. I think you should be very careful before making these applications because you may end up by being financially much worse off."

[5]. As regards the costs order made on 6th August, 1999, the order has already been made, it is, in my view, now too late to re-open the issue over seven years later. As Mr. Dunster said, costs would normally follow the event—as has happened here. This accords with Rule 3 of the General Principles relating to costs which appears at page 103 of the text submitted by Advocate Barnes on Mrs. Ogier's behalf under cover of his letter of 23rd April, namely Cook on Costs 2nd Edition, which, in turn is taken from the former Order 62 Rule 3 (3) Rules of the Supreme Court, which are still followed in Guernsey.

[6]. Accordingly the only issues remaining are as to whether the costs of the strike-out application should also follow the event, and as to whether either of the sets of costs should be on a recoverable or full indemnity basis. In my view, in recognition of all the authorities on the subject since Ritter v. Godfrey [1920] 2 KB 47, there is no valid reason why I should deprive the successful Defendant/Applicant in the perimé/strike-out proceedings of its costs. This principle applies all the more in the case of a successful defendant than in that of a successful plaintiff, for the former is brought to Court to answer process, whereas the latter comes to Court of his own free will. Accordingly I award the costs of that Application to the Defendant.

[7]. In his Skeleton Argument of 18th September, 2006, Mr. Dunster pressed the argument for full indemnity costs on the basis that the action and the subsequent applications had been pursued unreasonably within the meaning of Rule 48(4)(b) of the 1989 Rules, and there are certainly grounds which might be advanced in support of that view. In paragraph 2 he cited Hulme v. Matheson Securities (Channel Island) No 2 [1997] Appeal No. as regards the principles laid down by the Guernsey Court of Appeal when interpreting Rule 48.

[8]. I have no doubt that those are the correct principles to be applied in a case such as this one, and, despite the length of time this case has taken, it is perfectly clear from Hulme v. Matheson that sub-Rule (3) gives the Court full discretion as to whether to award costs on the higher basis. In Zekavica v. Stefani [2000] Royal Court Case 376, which was a successful application for half of the indemnity costs in a case which had been struck out for want of prosecution, I set out the principles followed in determining an application under Rule 48 sub-Rules (3) and (4), and as regards paragraphs (a) and (b) of the latter, and I remain of the opinion that the views I then expressed are correct.

[9]. Mr. Dunster further complained that a large amount of costs had been incurred since the first Court of Appeal Judgment, and that his client was very largely blameless as regards the course which the case had taken since then—in contrast he submitted that the Plaintiff/Respondent had behaved unreasonably and been responsible for inordinate delay.

[10]. While I agree with Mr. Dunster that the *quantum* of the costs incurred in this action since it became clear that there was only one defendant are likely to be considerable, that is really a matter for taxation. I also appreciate

the force of his submissions as to why the costs hereof should be awarded on an indemnity basis.

[11]. However Mr. Dunster has claimed recoverable costs on an alternative basis and, taking all the circumstances of this case and its history into account, not forgetting, on the one hand, the strictures of Sumption J.A. *(supra),* or Mrs. Ogier's medical history on the other, in the judicial exercise of my discretion I think it would be right to follow that course here. The costs now awarded to the Defendant will, therefore, be on a recoverable basis.

[12]. Order accordingly.

A.R.W.Hancox
Lieutenant Bailiff
27th April 2007

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

No. 205

Civil

The 30th day of April, 2007 before Alan Robin Winston Hancox Esquire, E.G.H., C.B.E., Lieutenant Bailiff, sitting alone

MAUREEN SYLVIA OGIER

Plaintiff

and

GRAND HAVRE HOLDINGS LIMITED

Defendants

Whereas on the 30th May 2006 the Lieutenant Bailiff ordered that the Plaintiff's action which was placed on the pleading list on 18th day of April 1997 be struck out and whereas on the 27th October 2006 the Lieutenant Bailiff considered an application for leave to appeal therefrom and heard Advocates N.J. Barnes and M.G.A. Dunster counsel for the Plaintiff and Defendant respectively. The Lieutenant Bailiff this day handed down judgment in the terms attached hereto and REFUSED the said application.

S M D ROSS

Her Majesty's Deputy Greffier

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IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between:

MAUREEN SYLVIA OGIER

Plaintiff/Applicant

and

GRAND HAVRE HOLDINGS LIMITED

Defendant/Respondent

Ruling on Plaintiff's Application for leave to Appeal dated 26th June 2006

[1]. On the 30th May, 2006, I ordered that Mrs. Ogier's action, which, for several reasons, some of which were connected with her protracted applications for legal aid, has taken many years to reach even this interlocutory stage, should be struck out under Rule 36(2) of the Royal Court (Civil) Rules 1989, for want of prosecution. The reason I did so was because of the distance of time which had elapsed since the Cause of Action had arisen. The facts of the case, if it had come to trial, would have centred very largely on the condition in which the Defendant's servants were said to have left the Hotel Houmet du Nord, of which Mrs Ogier was at the material time the tenant and licensee.

[2]. The Defendant Company had operated a nearby hotel, then known as Novotel, and were desirous of accommodating some of their staff in the Houmet. Consequently, Mrs. Ogier let nineteen rooms to the Company with effect from 16th March, 1989, under two successive agreements the second of which ended on or about 1st May, 1991, when Grand Havre declined to renew the arrangement and vacated the premises. Because of the alleged state of the property after the lettings, Mrs. Ogier claimed she had been unable to re-let the accommodation and, indeed, was refused a boarding permit for that purpose.

[3]. As a consequence of the foregoing Mrs. Ogier was unable to meet the rent due to the Guernsey Brewery, her landlord, and proceedings for eviction were instituted. As a further consequence Mrs. Ogier was unable to comply with the financial conditions imposed by the Royal Court in its Order granting her a stay of eviction, and she was evicted from the Houmet on 24th June, 1991.

[4]. These dates indicate the length of time that has been permitted to elapse since Mrs. Ogier lodged her action for breach of the Agreements against the Defendant, and to some extent provide the reason why the case has dragged on for so long, because she had sought to join the Brewery as a co-Defendant in an action for tortious inducement by this Defendant to the Brewery to break its contract with her. That application was unsuccessful for the reasons I gave in my Judgment of 4th May, 1999, and the appeal therefrom was dismissed on 27th September, 2000.

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[5]. Advocate Merrien appeared for Mrs. Ogier at the hearing of the Application to declare the action perimé and to strike it out at first instance on a legal aid certificate. He has since intimated to the Court that he is no longer instructed, and, in the result Advocate Barnes eventually appeared to argue this Application for leave to appeal my decision on 27th October, 2006. He stated that he was instructed in this matter and in the various costs applications filed on behalf of the Defendant.

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[6]. I will briefly elaborate on the extent of the dilapidations to which the Applicant referred in her second Cause, which is no longer extant, but which Sumption J.A. in his judgment in the appeal to which I have just referred said could be regarded as further and better particulars of the case made in the original Cause (though more graphically expressed), and to which Mrs. Ogier would undoubtedly have referred in her testimony if a trial did occur.

[7]. These were that the Hotel was kept full of casual rubbish, dirty glasses and bottles (paragraph 11), the Hotel bar was often broken into and the staff were caught drinking pilfered alcohol (paragraph 12), rowdy fighting (paragraph 15) that they vandalised the Hotel (paragraph 48) that the proposed Second Defendant (the Brewery) had `tricked the Plaintiff into running a lodging house for his commercial cousins' uncouth servants (paragraph 54) and that the Plaintiff's full stock of linen was returned in a haphazard heap of soiled and urine stained sheets and pillow cases that she found too noisome to count.

[8]. Advocate Dunster, who has appeared in all the recent sets of proceedings on behalf of Grand Havre, and who now opposes this Application, submitted that the Defendant would naturally wish to refute those allegations by oral testimony. He stated that all the twelve witnesses he would have sought to call had now moved on. The three who could have given the most relevant testimony, namely Mr Becker the manager had now retired, Mr Chapman, the expert surveyor, and Mr. Le Cheminant, the expert valuer had gone elsewhere.

[9]. Moreover, Mr. Dunster said, even if any of the material witnesses were still available, they would not have a clear recollection of events and it would be impossible to take instructions either to cross-examine the Plaintiff if she gave her evidence before the Jurats at the trial, or to challenge the authenticity of those documents which had been queried in the Trial Bundles at this distance of time. As I indicated at the outset, one of the main issues on the pleadings was what was the state of the Hotel, as left by the Defendant's servants when the second term ended on or about the 30th April, 1991, in the state alleged by the Plaintiff?

[10]. As a result, having been persuaded that the majority of the evidence that would be given in the action would be the oral testimony of witnesses; that some of them would be unavailable, and that those who were available would almost certainly have an imperfect recollection of the relevant facts, in the Judgment from which this appeal is sought to be preferred I held that the aggregate of the delays, totalling some fifteen years since the happening of the relevant events, was so gross that it not only was likely to, but would inevitably, cause serious prejudice to the Defendant, since it would be impossible, at this distance of time, to conduct a fair trial of the issues.

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[11]. Prior to Mr. Barnes entry into this case, in a four page document date stamped the 26th June last year Mrs. Ogier recited some of the reasons as to why she was dissatisfied with the decision of the 30th May, and wished to appeal therefrom.

[12]. I have read through Mrs. Ogier's application of 26th June, and according to my understanding her complaints are fourfold. First, that the Defendant has changed its Defence several times, apparently without the Court's leave; secondly, that certain proceedings took place in Court on the morning of the 3rd September, 2001, but that she was only given a transcript of the afternoon's hearing of that day, with the inference that she was not present during the morning Session; thirdly that she had been under the impression that the hearing which eventually took place in February, 2006, was for the purpose of hearing the perimé point only, whereas the application for strike out was combined with it; and fourthly that as a lay person she was generally unfamiliar with Guernsey law and procedure and that, if she was guilty of any delay, it was due to her lack of knowledge of Court procedure.

[13]. When Mr. Barnes appeared for Mrs. Ogier on the instant Application he did not seriously resist Mr. Dunster's submissions. He drew attention to Paragraph 2.2.1 of the Court of Appeal Practice Direction at [1999] 1 W L R page 1027, the material portion of which, from Mr. Barnes' point of view states:

> **"…..if the court below is in doubt whether an appeal would have a realistic prospect of success or involves a point of general principle, the safe course is to refuse permission to appeal. It is always open to the Court of Appeal to grant it."**

Mr. Barnes added that he did not think he could convince this Court that an appeal would have a good chance of success.

[14]. The Judgment from which this intended appeal is sought to be preferred was in three parts, namely:

1. **That the action became perimé on 4th October, 2002.**
2. **That, had I not reached the conclusion I did regarding the strike-out Application I would have exercised my discretion in favour of restoring it under Rule 50 (2) of the 1989 Rules.**
3. **That the action should be struck out under Rule 36, because, due to the time that had elapsed since the relevant events, it would no longer be possible to have a fair trial and this would operate to the prejudice of the Defendant.**

[15]. Turning now to Mrs. Ogier's letter of the 26th June, I do not think it can be said that the Defendant has changed its Defence several times, or, indeed, at all. The change sought was on Mrs. Ogier's part when she sought to join the Brewery and add a cause of action completely different from the original one against this Defendant. To my mind the Defendant has maintained its stance throughout and has consistently refuted the Plaintiff's allegations.

[16]. As to the second complaint in the letter, I have consulted the Court Log Record of both the morning and the afternoon Sessions of the 3rd September,

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2001. It is perfectly clear the Mrs. Ogier was present in person at both Sessions. In the morning there was a general review of the correspondence submitted to date by Mrs Ogier and also of the Defendant's outstanding applications for costs, which included those of the proceedings concerning the Plaintiff's application to amend the Cause and to join the Brewery therein. I then said that I would make some enquiries regarding the possibility of Mrs. Ogier obtaining civil legal aid, and that the Court would re-convene that afternoon.

[17]. At the afternoon Session I explained to Mrs Ogier the result of such enquiries regarding legal aid that I had been able to make, and I followed this up with a letter to H.M. Procureur, with the result that Mrs Ogier eventually received a legal aid certificate. In April, 2006, a copy of the proceedings occurring on 3rd September, 2001, was sent to Mrs. Ogier. These matters were covered in the first two pages of my Judgment of 30th May in the utmost detail, and I am satisfied there is no substance in this complaint.

[18]. Thirdly, as regards the letter of 26th June, 2006, even if Mrs. Ogier was under a misapprehension as to the joinder of the perimé point with the strike-out application, which I do not in any event accept, she suffered no prejudice thereby, since, in the result, the perimé issue was resolved in her favour, because although I held that the perimé rule applied, I was nevertheless disposed to grant Mr. Merrien's application, made on Mrs. Ogier's behalf, to restore the action under Rule 50(b). Moreover she was fully and ably represented by Mr. Merrien throughout, and he made no objection to the course taken by the Court.

[19]. As to the fourth matter, it cannot be gainsaid that during the long passage of this case Mrs. Ogier has received every possible assistance, including the grant of legal aid, consistent with doing justice to both parties. She was represented very ably by Mr. Merrien at first instance on the matter now before the Court and, having reviewed the history of this case I am of the view that she has not suffered any significant prejudice as a result of her not being fully conversant with Court procedure.

[20]. I now turn to the principles which govern applications for leave to appeal in the United Kingdom, and which have been followed in Guernsey. There are three leading cases in which the issue of when leave to appeal should be given in cases which, at first instance, involved the exercise of the Judge's discretion, was considered namely Hadmor Productions Ltd v. Hamilton [1983] 1 AC 191, Garden Cottage Foods ltd v. Milk Marketing Board [1984] AC 130 and Dubai Bank Ltd v. Galadari & Others [1990] 1 Lloyd's Law Reports 120. These decisions formed the foundation for the Practice Note subsequently issued under the authority of the Master of the Rolls to which I referred at paragraph [13].

[21]. Two years earlier Lord Woolf M.R. gave general guidance as to the course to be adopted when considering applications for leave to appeal in Smith v. Cosworth Casting Processes Ltd [1997] 1 WLR 1538. It was then common ground that Smith v. Cosworth was the starting point in considering applications for leave to appeal and I gave leave to appeal in each case. The guidelines were intended for the determination of applications for leave to appeal and for applications to set aside leave already granted. That case differed in an important respect from the instant one, in that a single Judge of the Court of Appeal had

granted leave to appeal, and the Court held that in ordinary circumstances the granting of leave is conclusive and will only be set aside if it can be shown that the intended appeal cannot succeed.

[22]. Smith v. Cosworth was followed in Stein v. Blake [1998] 1 AER 724 where the Full Court did set aside leave previously granted by the single Judge on the ground that the applicant (the proposed Respondent to the main appeal) had that which was described as a knock out point, so that there was no answer to it and, although there were other arguable grounds, they could not affect the result of the main appeal.

[23]. The authorities mentioned in paragraph [20] related to injunctions, which, of course, are a type of interlocutory relief which is within the Court's discretion to give. The Application from which the Appeal here is sought to be preferred is also interlocutory within the meaning of the decision in Salaman v. Warner **[[1891] 1 QB 734. Lord Esher's statement at page 735 has for many years been accepted as the correct test to be applied:**

> **"The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand if their decision, if given in one way, will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then I think it is not final but interlocutory."**

[24]. As I am of the view, applying these principles, that my decision of the 30th May was interlocutory in nature, I consider that the following passage from Lord Diplock's Speech in Hadmor Productions Ltd v. Hamilton *(supra)* is applicable. He said:

> **"An interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard. Upon an appeal from the judge's grant or refusal of an interlocutory injunction the function of an appellate court, whether it be the Court of Appeal or your Lordship's House, is not to exercise an independent discretion of its own. It must defer to the judge's exercise of discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it."**

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[25]. Since Smith v. Cosworth, as is shown by the directions issued by the English Court of Appeal, and promulgated under the hand of Lord Woolf M.R. (as he then was), which also appears as Practice Note [1999] 1 AER 186, the practice as to when leave to appeal should be granted, both by the judge at first instance and by the Court of Appeal, has been tightened up. By paragraph 10 the general test of whether there is a realistic prospect of success in the intended appeal is retained, but the limits of the application of that general test have been more precisely defined. In particular paragraph 16 states:

> **"The Court of Appeal does not interfere with the exercise of discretion of a judge unless the court is satisfied the judge was wrong. The burden on an appellant is a heavy one (many family cases do not qualify for leave for this reason). It will be rare, therefore, for a trial judge to give leave on a pure question of discretion. He may do so if the case raises a point of general principle on which the opinion of a higher court is required."**

[26]. In my judgment the decision arrived at in this case was clearly a matter of discretion under Rule 36(2) of the 1989 Rules. Consequently it falls directly within Lord Diplock's statement of the principles applicable to appeals where the discretion of the Judge at first instance is in question, and within the guidelines laid down by the Master of the Rolls in the 1999 Practice Note, which apply both to judges of first instance and to courts of appeal when considering leave to appeal. It is, again in my judgment, extremely unlikely that the Court of Appeal, applying the same guidelines, will interfere with the discretion that I have exercised. For these reasons, then, the Application is refused.

A.R.W.Hancox

Lieutenant Bailiff.
18th April 2007.

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