

Judgment 11/2011

Maurice v Jeremiah (Chief Executive of the States of Alderney) – Royal Court – Civil Action File 1547) – 18th April 2011

Judicial review – appeal from refusal by the Court of Alderney – application to import vehicle – appellant had subsequently been granted what he originally sought – no longer any substance to the appeal – no general public purpose would be served by hearing the appeal – appeal dismissed with no order as to costs.

THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 18th day of April 2011 before Richard John Collas Deputy Bailiff, alone

MARK MAURICE

Appellant

and

DAVID JEREMIAH

Respondent

Chief Executive of The States Of Alderney

Whereas on 2nd March 2011 the Deputy Bailiff considered an application as to whether an appeal from a decision of the Court of Alderney should be dismissed without a hearing on the ground that there is no longer any substantive issue to be resolved and heard thereon Advocate R I C E Harris, Advocate for the Appellant and H M Comptroller R J McMahon QC for the Respondent the Deputy Bailiff this day handed down judgment in the terms attached hereto and DISMISSED the said application and made no order as to costs.

S M D Ross

H M Deputy Greffier

IN THE ROYAL COURT OF GUERNSEY
(ON APPEAL FROM THE COURT OF ALDERNEY)

Between: **MARK MAURICE** **Appellant**
and
DAVID JEREMIAH **Respondent**
Chief Executive of The States Of Alderney

Judgment handed down: 18th April 2011

Before: Richard John Collas Esq., Deputy Bailiff

Advocate R I C E Harris, Advocate for the Appellant
H M Comptroller R J McMahon QC for the Respondent

Cases referred to:

- 1) R v Secretary of State for the Home Department, ex parte Salem [1999] 1 A.C. 450
- 2) R (Boxall) v Waltham Forest London Borough Council
- 3) Brawley v Marczyński (Nos 1 and 2) [2003] 1 WLR 813
- 4) Dearling v Foregate Developments (Chester) Limited [2003] EWCA Civ 913

Introduction

1. I am asked to decide whether an appeal from a decision of the Court of Alderney should be dismissed without a hearing on the ground that there is no longer any substantive issue to be resolved and, if it is to be dismissed, what order for costs is to be made.
2. The following summary of the factual background to the appeal is largely taken from the judgment of the Court of Alderney. The case relates to the Appellant's attempts to import two Hummer vehicles into the Island of Alderney from the United Kingdom. The first vehicle was white in colour and the second was red. I will adopt the terminology used by counsel and refer to them as the "White Hummer" and the "Red Hummer" respectively.
3. Following discussions, in March 2009, between the Appellant and staff at the General Office of the States of Alderney, the Appellant formally applied to import the White Hummer. The Court of Alderney found that the Appellant informed staff that it was a large leisure vehicle that was also going to be made available for use at weddings and funerals. The staff were informed that the vehicle was 6' 7" wide, 15' 6" long and weighed 57 cwt. The Appellant paid a fee of £1,450 and later paid an additional £100. The fee was calculated by the States based on the scale of fees applicable to vehicles for private vehicles. Lower fees were payable for commercial and goods vehicles, however the White Hummer was too large to be classified as a commercial vehicle under the relevant fee Ordinance.

4. On 24 April 2009 the Respondent informed the Appellant in writing that he had refused the Appellant's application for a licence to import the White Hummer on the ground that by reason of its size the vehicle was unsuitable for personal use on the Island's roads. Following representations by the Appellant's Advocates, the Respondent wrote to the Appellant on 7th May advising that he had reconsidered his earlier decision after consulting with the General Services Committee of the States of Alderney and that "on all the information provided" his original decision stood. He had also consulted with the police who did not believe there to be any private vehicle on the Island matching the overall size and weight of the White Hummer.
5. The Appellant issued an application, dated 24th April, for judicial review of the Respondent's decision on the following grounds:
 - a) the decision was *ultra vires*; the Respondent had no power to refuse to issue the licence because the requirement for an import permit was to raise revenue, not to confer a discretion on the Chief Executive of the States to refuse to issue an import licence;
 - b) the Appellant had a legitimate expectation that a permit would be issued because no licence had ever previously been refused; and
 - c) the decision was unreasonable and irrational in the sense used in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223.
6. The application for judicial review was dismissed by the Court of Alderney on 22nd July 2010. The Appellant has appealed against the decision of the Court of Alderney by Notice of Appeal dated 3rd August 2010.
7. The matter first came before me on 8th October 2010 when I gave directions for an exchange of skeleton arguments and listed the appeal for a hearing beginning on 4th January 2011. By application dated 3rd September, the Appellant applied for leave to adduce and rely upon additional evidence contained in an affidavit sworn by the Appellant on 27 August 2010. Later, at a hearing on 18 November 2010, counsel requested, and I agreed, to vacate the hearing date and adjourn the matter *sine die*; I understood that certain discussions were taking place.
8. The additional evidence contained in the Affidavit of 27 August related to the Red Hummer, the dimensions and weight of which are very similar to those of the White Hummer. The Respondent had issued an import permit for the Red Hummer after the Court of Alderney handed down its judgment of 22nd July dismissing the Appellant's application for judicial review of the Respondent's decision to refuse a permit for the White Hummer.
9. In a skeleton argument filed on behalf of the Respondent in opposition to the Appellant's application for leave to adduce the additional evidence, I was informed that the Red Hummer had been imported as a vehicle for commercial use, not for personal use. I have not heard argument, and have not been required to decide, whether the further evidence should be adduced.
10. Following the importation of the Red Hummer, the Appellant had further discussions with the Respondent and on 7th December he submitted a fresh application for an import permit for the White Hummer. In his Seventh Affidavit in this matter, sworn on the 8th February 2011, the Appellant explained that the new application was on a new style form introduced by the States of Alderney which differed from the form in use in April 2009 as it contained additional boxes for further information.
11. When completing the fresh application for a permit for the White Hummer, the Appellant said that he described the vehicle as a light goods vehicle but he did not complete a box entitled "Private Use/Commercial Use" because he considered the White Hummer to be a goods

vehicle. (The relevant Fees Ordinance distinguishes between commercial vehicles (not exceeding 40 cwt) and goods vehicles (between 2 and 10 tons unladen weight)).

12. The Appellant's mother was helping the Appellant to import the vehicles and has sworn an affidavit on behalf of her son. In her affidavit, she said that she attended a meeting with the new Chief Executive of the States of Alderney (the Respondent having retired from office by reason of age) who indicated to her that the word "Private" had to be deleted and the vehicle stated to be for "Commercial Use". The Chief Executive told her that he had been so advised by H M Comptroller. Mrs Maurice said she reluctantly complied and completed the box as requested.
13. After considering the fresh application, the Chief Executive issued an Import Licence, on 21 December 2010, authorising the importation of the White Hummer. In the Licence he described the vehicle type as "Commercial". It is to be noted that he did not attach any conditions to the Licence.
14. Thus it has come to pass that the Appellant has been granted what he originally sought and there is no longer any substance to the Appeal. However, as is often the case where parties succeed in compromising a matter after substantial involvement from lawyers, there is disagreement as to costs.
15. The Appellant submits that the Respondent has effectively reconsidered the matter and reversed his earlier decision, which he would not have done if the Appellant had not issued these proceedings. If necessary, the Appeal should proceed and should be allowed and the Respondent's decision of 24 April 2010 should be set aside. The Respondent, on the other hand, submits that the successful application for importation is distinguishable for the earlier application in that it was for a commercial vehicle and the fee tendered was calculated on that basis. I enquired whether any restrictions have been placed on the use of the vehicle that would restrict the Appellant's ability to use the vehicle solely for personal use if he so decided. H M Comptroller said that once a vehicle has been imported, there are no restrictions as to how it is used so that if an owner, for example, decides he no longer needs it for commercial use he may instead use it solely for personal use if he so wishes.
16. Advocate Harris said that in addition to the legal costs his client has incurred, the Appellant incurred storage charges in England whilst he was waiting for an Import Licence for the White Hummer. If it was found that the Respondent's original refusal of a licence was unsustainable, he would want to have the opportunity to recover those charges from the States of Alderney.
17. I am grateful to counsel for the legal authorities they have put forward, especially those produced to me since the oral hearing.
18. R v Secretary of State for the Home Department, ex parte Salem [1999] 1 A.C. 450 concerned a Libyan national who, on his arrival into the country, claimed asylum. He was granted temporary admission and awarded benefits. He commenced judicial review proceedings after his benefits had been stopped. They were later reinstated and by the time the matter came before the House of Lords, there was no live issue as to his position.
19. Lord Slynn of Hadley said the following in his speech, with which all the other judges agreed (at page 456G):

"My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of law, your lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se."
20. Lord Slynn continued (at page 457A):

“The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.”

21. In the instant case there is no such good reason in the public interest that requires the appeal to be determined.

22. The possibility that the Appellant might bring subsequent proceedings against the States of Alderney to recover the storage costs incurred whilst the White Hummer was waiting to be imported into the Island is not a sufficient reason to require the Royal Court to proceed to hear substantive argument on the present appeal.

23. The only issues to be determined are in relation to costs. Advocate Harris referred to the decision of Scott Baker J in R (Boxall) v Waltham Forest London Borough Council (unreported) 21 December 2000, in which at paragraph 22 the judge set out a number of principles he had deduced from the authorities:

“(i) The court has power to make a costs order when the substantive proceedings have been resolved without a trial but the parties have not agreed about costs.

(ii) It will ordinarily be irrelevant that the claimant is legally aided.

(iii) The overriding objective is to do justice between the parties without incurring unnecessary court time and consequently additional cost.

(iv) At each end of the spectrum there will be cases where it is obvious which side would have won had the substantive issues been fought to a conclusion. In between, the position will, in differing degrees, be less clear. How far the court will be prepared to look into the previously unresolved substantive issues will depend on the circumstances of the particular case, not least the amount of costs at stake and the conduct of the parties.

(v) In the absence of a good reason to make any other order the fall back is to make no order as to costs.

(vi) The court should take care to ensure that it does not discourage parties from settling judicial review proceedings for example by a local authority making a concession at an early stage.”

24. Those principles have been cited with approval by the Court of Appeal in Brawley v Marczyński (Nos 1 and 2) [2003] 1 WLR 813 and in Dearling v Foregate Developments (Chester) Limited [2003] EWCA Civ 913 where Dyson LJ said, at paragraph 23, that the principles apply to civil proceedings, whether of a judicial review nature or ordinary private law proceedings.

25. I will address each of the general principles in turn, referring to them by the sub-paragraph numbering above.

(i) I have a discretion to make a costs order without hearing the appeal.

(ii) As far as I am aware, the Appellant is not legally aided.

(iii) I accept that I must do justice between the parties without incurring unnecessary court time and additional cost.

- (iv) My understanding of the task I have to perform is to look at the grounds of appeal and ask myself whether it is obvious that the appeal lies at one end or other of the spectrum and whether it is obvious which party will be successful. The answer in my view is not obvious. Sometimes it is possible to look at grounds of appeal and form an early view that it is obvious either that the appeal is more than likely to be allowed or that the grounds appear to be hopeless and without merit. The present appeal is neither. It is at neither end of the spectrum, it lies somewhere in the middle but, if I had to hazard a guess, I would say that it lies closer to the end of the spectrum that favours the Respondent rather than the Appellant. The merits of the Appellant's case against the Respondent have already been tested in the Court of Alderney; the Appellant is dissatisfied with the Court's decision; and he is seeking to re-argue some of the same issues as have already been ruled upon. I cannot say that it is obvious the Appellant will succeed. The fact that the Appellant was subsequently issued with an Import Licence is of no relevance because the details requested on the application form and the information supplied were different on the second occasion.
 - (v) In the absence of good reason to make any other order I must make no order as to costs.
 - (vi) Such a decision is unlikely to discourage any party from settling judicial review proceedings, or an appeal, at an early stage.
26. Having applied those general principles, I have reflected on whether it is fair and just to make no order. I am satisfied that it is. The Court has a duty to manage its time and not to spend court time on hypothetical or academic appeals where little or nothing of any substance will be achieved and where there is no general public purpose to be served by hearing the appeal. The Appellant may consider it to be unjust but no order for costs is better than continuing with the appeal and, if the appeal is dismissed, making a costs order in the Respondent's favour.
27. For the reasons I have given, I dismiss the appeal without a hearing on its merits and make no order as to costs.