

Judgment 13/2008

**Canivet Webber Financial Services Ltd v Guernsey
Financial Services Commission – Court of Appeal (Civil
Appeal 395) – 18 April 2008**

Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 – appeal pending before the Royal Court from decision of the Commission – unsuccessful application to the Royal Court for an order restraining an Advocate from acting for the Commission – application to the Court of Appeal for extension of time, and for leave, to appeal from that decision – matter heard in the absence of appearance by the appellant – no possible basis for a successful appeal on either of the grounds relied upon by the appellant – application for extension of time refused – the substantive appeal to the Royal Court should be brought on with all speed (See Judgment 47/2007)

IN THE COURT OF APPEAL IN THE ISLAND OF GUERNSEY

Civil 395

The 18th April, 2008 before Sir Philip Bailhache, presiding, David Arthur John Vaughan CBE, QC and Dame Heather Steel, DBE

CANIVET WEBBER FINANCIAL SERVICES LIMITED

(Appellant)

V

GUERNSEY FINANCIAL SERVICES COMMISSION

(Respondent)

In the matter of the appeal by the Appellant to the Royal Court from the decision of the Respondent dated 2 March 2007, and the applications by the Appellant arising from decisions made by the Royal Court on 13 September 2007 and 25 February 2008 respectively;

Whereas THE COURT, on 2nd April, 2008, having heard Advocate J M Wessels for the Respondent, and in the absence of appearance by the Appellant (on whose behalf written submissions had been lodged by its Director, Mr A D C Webber), REFUSED the application for extension of time to appeal from the dismissal on 13 September 2007 of the Appellant's application for Advocate Wessels to be restrained from acting for the Respondent, RESERVED its reasons and AWARDED COSTS in favour of the Respondent on the ordinary recoverable basis;

THE COURT this day ISSUED JUDGMENT in the terms attached hereto.

K H TOUGH

Registrar of the Court of Appeal

**Approved
Judgment
15 April 2008**

**IN THE COURT OF APPEAL OF THE ISLAND
OF GUERNSEY**

CIVIL DIVISION – APPEAL NO 395

Wednesday 2 April 2008

Before: **Sir Philip Bailhache, President
David Arthur John Vaughan, CBE QC
Dame Heather Steel, DBE**

Between: **CANIVET WEBBER FINANCIAL SERVICES (Appellant)
LIMITED**

v

**GUERNSEY FINANCIAL SERVICES (Respondent)
COMMISSION**

**The Appellant who is unrepresented did not appear
Advocate J M Wessels represented the Respondent**

JUDGMENT

Vaughan, JA

1. This is the Judgment of the Court.
2. In this Application made by Canivet Webber Financial Services Limited (“Canivet Webber”), Canivet Webber;
 - (a) seeks leave to extend the time to appeal against a decision of the Lieutenant Bailiff,
 - (b) seeks leave to appeal against the same decision of the Lieutenant Bailiff and, if leave is granted, appeals against that decision.
3. The decision in question was delivered orally by the Lieutenant Bailiff on 13th September 2007 (which is the relevant date for any application for leave to appeal)

and was reduced into writing and sent to the parties on 12th October 2007. By that decision the Lieutenant Bailiff refused an application made by Canivet Webber to prevent Advocate Wessels, a partner in the firm of Ozannes, from acting on behalf of the Guernsey Financial Services Commission (“the Commission”) in a challenge being made by Canivet Webber in the Royal Court from a decision of the Commission. That decision of the Commission was to revoke finally Canivet Webber’s licence under Section 9 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law 2002 following a decision of the Guernsey Financial Services Tribunal (“the Tribunal”) dated 20th February 2007.

4. There is also before us an application by Canivet Webber for leave to appeal against a further decision by the Lieutenant Bailiff dated 5th December 2007 whereby she ordered Canivet Webber to provide security for costs in respect of the said challenge to the decision of the Commission to revoke Canivet Webber’s licence.

5. Neither Canivet Webber nor Mr. Webber, a Director, who has dealt with these matters on behalf of Canivet Webber throughout, attended when the matter was called on before us. Both had been given ample warning of the dates on which this matter was to be heard. Mr. Webber originally contended that he would need six months notice before he could deal with these applications (which was clearly nonsensical) and also that he would be engaged at that time in standing in the Guernsey General Election which is in the middle of April. He also relied on the illness of his parents and his partner. Finally he produced a doctor’s certificate, which did not state that he was unfit to attend court, but said that because of the pressures on him it would be unreasonable to expect him to present his case at short notice. However, there has been no question of short notice and there is no possible health reason why he could not attend court on the due date. Furthermore, as we were well aware of the matters he wished to advance because they were fully set out in the judgment of the Lieutenant Bailiff and in an extensive e-mail dated 17th January 2008 setting out in full the grounds he wished to advance, we considered that the company’s application should be heard in the absence of either the company or Mr. Webber. However, we did decide that his application for leave to appeal against the decision for security for costs should be adjourned to the next sitting of this Court, that is if the Commission decide to enforce that order. We decided that this was the appropriate way forward in view of the fact that in certain circumstances the order for security for costs could be fatal to Canivet Webber’s substantive challenge to the Commission’s decision.

6. Although the Application for Leave to Appeal is clearly out of time because the first intimation that an application would be made, was not made until 15th November 2007, we consider it appropriate to consider first whether we would have granted Canivet Webber leave to appeal against the decision of 13th September 2007. If we were to consider that we would be prepared to grant leave to appeal, we might take a more favourable view in relation to the application to extend time.
7. The Judgment of the Lieutenant Bailiff sets out the contentions of Canivet Webber very fully, so we can deal with the issue of leave to appeal relatively shortly. In essence it was contended that Advocate Wessels should be restrained from acting for the Commission in Canivet Webber's challenge before the Royal Court. In broad terms the application was made on the basis of the contention that Advocate Peter Ferbrache, also a partner of Ozannes with Advocate Wessels, acted in relation to Canivet Webber and also for Mr. Webber personally, and also because of the fact that Advocate Peter Harwood, the Senior Partner of Ozannes was Chairman of the Commission.
8. The contention in relation to Advocate Peter Ferbrache was based on the contention that he was a personal friend of Mr. Webber, was at some stage a non-executive Director of Canivet Webber, and has acted for Mr. Webber and his ex-wife in various matters. This contention had previously been raised before the Tribunal as a possible conflict of interest, but it was very sensibly resolved (if it needed resolving) by an undertaking by Advocate Wessels not to discuss this case with Advocate Peter Ferbrache. The Lieutenant Bailiff accepted that the undertaking had been honoured and there is nothing to suggest before us that it would not be honoured in the future. In the light of that undertaking Advocate Wessels acted for the Commission in the two-day proceedings before the Tribunal. We considered that if Advocate Wessels could act for the Commission in relation to Canivet Webber on the hearing before the Tribunal, it could not possibly be argued that he should not act for the Commission in the same basic matter before the Royal Court.
9. Insofar as the arguments were based on the fact that Advocate Peter Ferbrache might have confidential information relating to Canivet Webber or in relation to Mr. Webber, the Lieutenant Bailiff found there was no possible basis for believing that Advocate Peter Ferbrache had any relevant confidential information in relation to the affairs of Canivet Webber or Mr Webber such as would give rise to any conflict of interest that could prevent Advocate Wessels from continuing to act for the Commission before the Royal Court in respect of Canivet Webber's challenge. The

matters advanced were considered in detail by the Lieutenant Bailiff. We have seen or read nothing which could possibly suggest that there was any prospect of a successful appeal against the decision of the Lieutenant Bailiff based upon the contentions relating to Advocate Ferbrache.

10. The second basis of the application to restrain Advocate Wessels from acting related more to the position of his firm Ozannes and the fact that Advocate Peter Harwood, Senior Partner of Ozannes, was also Chairman of the Commission. Of course Advocate Harwood was not Advocate for the Commission in these matters. As the Lieutenant Bailiff found, these matters of which complaint was made consist largely, if not entirely, of a series of speculations. She found there was absolutely no evidence to support any of the matters put before her and she disregarded those as speculative allegations. Other aspersions were cast upon Ozannes by Mr. Webber in his submissions before the Lieutenant Bailiff, which mainly seemed to relate to the attitude of Ozannes as opposed to other firms of Advocates in Guernsey. But again the Lieutenant Bailiff found there was nothing which could cast any doubt whatsoever upon the professional integrity of Ozannes. Again, we have seen or read nothing which could possibly suggest a successful appeal against the decision of the Lieutenant Bailiff on the position of Ozannes.
11. Accordingly, we consider that there is no possible basis for a successful appeal against the decision of the Lieutenant Bailiff of 13th September 2007 on either of these grounds and accordingly we reject the application for an extension of time and the application for leave to appeal against that decision.
12. Finally, we would wish to emphasise, as we stated in the course of argument, that we consider that the substantive application by Canivet Webber against the decision of the Commission should be brought on with all speed. It is clearly in the public interest that this challenge should proceed so that the issue of the revocation of the licence can be finally resolved as a matter of substance. We see little benefit in interlocutory disputes, which can have little effect other than to delay the resolution of the real issue between the parties.