

**Judgment 49/2003**

**Murfitt v States of Alderney  
Court of Appeal  
(Civil Appeal 315)  
25<sup>th</sup> September, 2003**

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**Eviction – appeal from the Court of Alderney – application for stay pending application to European Court of Human Rights.**

**IN THE COURT OF APPEAL OF GUERNSEY**

Civil Division

The 25th day of September, 2003 before Richard Charles Southwell, Q.C., Presiding, Hon Michael Jacob Beloff, Q. C., and Peter David Smith, Q. C.

COLIN DOUGLAS MURFITT

Appellant

V

STATES OF ALDERNEY

Respondent

On the application of the Appellant for stay of execution of the order for eviction made by the Court of Alderney on 22<sup>nd</sup> March, 2001, pending an application to the European Court of Human Rights;

THE COURT having heard the Appellant in person and Advocate R. McMahon for the Respondents, thereon, GAVE JUDGMENT in the terms attached hereto, REFUSED the application and AWARDED COSTS to the Respondent on the normal recoverable basis.

K. H. TOUGH  
Registrar of the Court of Appeal

**OFFICIAL TRANSCRIPT**

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Finalised 18.11.03

**THURSDAY 25TH SEPTEMBER 2003**

**THE COURT OF APPEAL OF GUERNSEY**

**Before**

**Richard Charles Southwell, Esq., QC; presiding**  
**Hon. Michael Jacob Beloff, Esq., QC**  
**Peter David Smith, Esq., QC**

**COLIN DOUGLAS MURFITT v. THE STATES OF ALDERNEY**  
**(Civil Appeal No. 315)**

**Judgment delivered by the Hon. Michael Jacob Beloff, Esq., QC**

1. This is an application of Mr Murfitt for a stay of execution of an eviction order of the Court of Alderney pending an application to the European Court of Human Rights.
2. The background to this matter is fully set out in the judgment delivered by Sumption JA (with which the other members of the Court of Appeal agreed) dated 20th September 2002.
3. The litigation concerns Braye Lodge, a property at Braye Harbour on the Island of Alderney.
4. On 10th July 2000 the States of Alderney, the owners of the land, on which the lodge is situated, gave notice to Mr Murfitt to quit, and subsequently began proceedings in the Court of Alderney to evict him.
5. On 22nd March 2001 The Court of Alderney ordered his eviction with a stay of 21 days.
6. On 11th December 2001 Mr Murfitt's appeal to the Royal Court of Guernsey was summarily dismissed by the Deputy Bailiff because he failed to appear on the appointed day to prosecute it. The Deputy Bailiff, however, observed that the appeal appeared to be without merit.  
  
After a series of applications Mr Murfitt obtained leave to appeal to this Court.
7. On 20th September 2002 this Court of Appeal dismissed the appeal, and ordered a stay of execution for a further 28 days in order to enable Mr Murfitt to move out.
8. Mr Murfitt then applied for leave to appeal to the Privy Council. This Court said "We do not think that leave should now be granted, not least because it is the established practice of the Privy Council that they will not entertain appeals on facts where the tribunals below have agreed on the facts. We have made the same finding of fact as the Court of Alderney, and this appeal will therefore be completely inadmissible and we are not proposing to give leave for it."

9. By a letter dated 14th May 2003 to the Registrar Mr Murfitt indicated that he intended to apply to this Court for a stay of execution until his petition to the Judicial Committee of the Privy Council for special leave to appeal had been heard.
10. On 9th July 2003, Mr Murfitt’s application for special leave came before the Privy Council and was refused.
11. In consequence his application for a stay to this Court has been overtaken by events.
12. Mr Murfitt next indicated to the Registrar, that he would be making an application to the European Court of Human Rights and by letter dated 22nd August 2003 Mr Murfitt applied for a stay pending his petition to the European Court of Human Rights. In his letter he invited the Court to “*consider the situation of The Channel Islands Granite Limited, who have never had evictions brought against it and my occupancy as the controlling director*” That company allegedly occupies Braye Lodge as its primary place of business.
13. Mr Murfitt however, confronts an insuperable obstacle in his application. He is unable to identify to us the basis of any jurisdiction in this Court to order a stay pending such a petition, in particular against a background of this litigation history, when the Privy Council have been seized of but rejected an application for leave to appeal. As Advocate McMahon for the Respondent succinctly states “this Court is functus officio”.
14. More importantly, even if we had jurisdiction, we do not consider that, as a matter of principle, such a stay should be granted. The European Court of Human Rights is not a Court of Appeal from this Court – or indeed from the Privy Council. We would adopt the reasoning of Hart J. in *Westminster CC v Porter* [2003] 2 WLR 420, paras 37-39, 44-46.
15. In that case Hart J had to deal with an application by Dame Shirley Porter to stay execution of a Council’s claim against her for a substantial sum certified as due by the District Auditor. He said

*“37. The other difficulty about the submission is one of law. A very similar point was considered by Evans-Lombe J in Locabail (UK) v Waldorf Investment Corpn (No 4)[2000] HRLR 623. That was a case in which the defendant, Mrs Emmanuel, sought to argue for a stay of execution of an order, which had been made by the district judge and confirmed by the Court of Appeal, for possession of the house in which she lived. At the time at which the argument took place the Human Rights Act 1998 was not in force, but her argument was that she proposed to make a complaint to the European Court of Human Rights and that if that court found in her favour, and did so after the coming into force of the 1998 Act, then execution of the judgment of the deputy judge would be unlawful.*

**38.** In answer to that argument Evans-Lombe J said, at p 628:

*I am unable to accept these submissions. I do not accept that, if Mrs Emmanuel succeeds in the European Court of Human Rights, the result will be to render the judgment of the deputy judge unlawful. The Court of Human Rights is not constituted a further court of appeal from the courts of this country. By section 2(1)(a) of the Human Rights Act 1998, our courts are bound to take into account the judgments of the Court of Human Rights in arriving at their own decisions as to the applicability of the Convention for the Protection of Human Rights and Fundamental Freedoms. Mrs Emmanuel’s proceedings in the Court of Human Rights will be against the United Kingdom for failing to provide a court to decide her case which conformed to her rights as defined by article 6(1). The Court of Human Rights will not determine what equitable rights (if any) Mrs Emmanuel has in the two properties in question. Those issues were determined by the deputy judge and his decision has been effectively affirmed by the Court of Appeal so as to make it final. A favourable decision of the Court of Human Rights in*

*favour of Mrs Emmanuel will have no effect on that judgment. It will remain finally determinative of the property rights between the claimants and Mrs Emmanuel for the purposes of our domestic law. The only way in which that judgement could be set aside, short of proceedings to have it declared void on other grounds such as fraud, would be by special legislation. It is highly unlikely that Parliament would concern itself to interfere in the property rights of the parties to these proceedings”.*

*39. So here, subject to any appeal from it, my judgment today will remain determinative of the obligations of the first defendant to the claimant. The fact that the first defendant may make a successful claim to the European Court of Human Rights against the United Kingdom Government will have no effect on that judgment. It would only, as it seems to me, be if this court could be presented with a real probability of the enactment of legislation by the United Kingdom Parliament, which would reverse the effects of my judgment today, that I should begin to consider the question of whether it would be right with that prospect in mind to stay enforcement in the meantime. However, nothing that has been urged on the first defendant’s behalf persuades me that any such prospect exists.*

*44. The proposition that the English courts, in deciding whether to enforce their own judgments or to allow enforcement of their own judgments, have to have regard to what the European Court of Human Rights may ultimately say as a result of a petition to that court about the circumstances in which liabilities have been established by those judgments, seems to me entirely inconsistent with the only judicial observation on the point that has been drawn to my attention, namely that of Evans-Lombe J in *Locabail (UK) v Waldorf Investment Corp* (No 4) [2000] HRLR 623. That observation seems to me entirely consistent with principle, namely that the Court of Human Rights is not, and has not been constituted by Parliament as, a court of appeal from this jurisdiction.”*

16. For these reasons Mr. Justice Hart rejected Dame Shirley Porter’s application for a stay. They appear to me to be entirely applicable to this jurisdiction.
17. Finally, I note that the judgment of the Court of Alderney and of this Court did make it clear that the position of the Company was considered: both Courts rejected the claim by Mr Murfitt that the company had a lease or that Mr Murfitt had a sub-lease of Braye Lodge. There appears from the papers with which he has furnished us to be no merit in Mr Murfitt’s proposed application to the European Court of Human Rights: but that is a matter for that Court and not for us.

The application is refused.

SMITH, JA: I agree and I have nothing to add.

SOUTHWELL, JA: I also agree.

MR. MURFITT: Sir, can I address you briefly? That yesterday-

SOUTHWELL, JA: No, I think it’s for Mr. McMahon to address us.

ADVOCATE McMAHON: Sir, in the light of the decision on the application I’d ask for the Respondents’ costs in this Court.

BELOFF, JA: What do you have to say to that, Mr. Murfitt?

MR. MURFITT: Sir, I would oppose the costs because the Crown Officers say and allege that they own the property and their client is the States of Alderney which allege they own the property. I pay my taxes to the States of Alderney which is a little part of me and I shouldn’t have costs awarded

against me in this case for the principle of costs against me. Also I would like to draw your attention to- that I gave you an assignment last night, the assignment was the assignment of the property to Rowe & Mitchell Limited-

BELOFF, JA: What point does this go to? At the moment you're addressing us on the application for costs, and I- does the assignment deal with that matter?

MR. MURFITT: Yes it does, sir, because the assignment which you've seen- well there is- if the learned Clerk could pass it up to you please.

SOUTHWELL, JA: Yes. (Document handed up)

MR. MURFITT: That assignment if you will open it fully sir please (inaudible) and on the left-hand page, the top- sorry, the right-hand top page, it says "Property measuring 90 ft. to 200 ft. North of the Old Admiralty Warehouses" and this is for the freehold "the north of the Old..." which is delineated on the plan at the Alderney Land Registry, north, which-

SOUTHWELL, JA: No Mr. Murfitt, will you stop please. Your application to this Court has been dismissed. Any discussion on this assignment or the other document you have there has ceased to be of any relevance in this Court because your application has been dismissed. The only surviving question is that of costs; if you have nothing further to say about costs, this is now finished.

MR. MURFITT: This is to do with costs, sir.

SOUTHWELL, JA: Right, well will you kindly come to the point.

MR. MURFITT: Yes sir, I'm coming to the point that that is another piece of fact that you have not had, I believe if it's still just with the Greffier, to regard. When I read it out last night, what was there, and you have not seen the wood for the trees once again because the property is not-

BELOFF, JA: Mr. Murfitt can I just- Mr. Murfitt, could you just listen for a moment. This may or may not, I say nothing about it, have some relevance to the underlying merits of the case which you are now seeking to take to the European Court of Human Rights, it has nothing to do with whether or not you should pay the costs of an application for a stay in which this Court has unanimously held there was no jurisdiction in the Court to grant. Is there anything else you've got to say relevant to why costs should not, as is usual, follow the event, please say so now but don't trouble this Court with arguments that go to the underlying merits of your case, which have been decided several times; and they are yet to be decided in Strasburg.

MR. MURFITT: Yes that case has to be decided in Strasburg, I ask you to apply your minds with the help and grace of God to find a way that you could make this application non-functus, it must be wrong if I cannot apply to this Court or to the Court of Alderney at first instance or any judge even to have a stay of eviction because when it comes to the costs-

SOUTHWELL, JA: Then you're now re-arguing whether you should have been granted a stay Mr. Murfitt.

MR. MURFITT: No, no sir, you have told me that you in your wisdoms cannot find anywhere- the lawyer has told you that he cannot because he's charged by to Court say-

BELOFF, JA: And you will have noticed if you had listened to our judgment that the Court in London in the Chancery Division has come to exactly the same conclusion for effectively the same reasons. Don't re-argue the case Mr. Murfitt.

MR. MURFITT: I'm not sir, I'm just pointing out that the specialist with my earache were prepared to cut in and chop lumps out, but it's something different-

SOUTHWELL, JA: No Mr. Murfitt, Mr. Murfitt you'll either deal with costs or this Court will rise. Do you have anything further to say about costs, nothing else.

MR. MURFITT: Costs. The reason is of the costs, if I own that property, because I own the Rowe & Mitchell Limited, who has never assigned this property to the Channel Islands Granite Limited, there is in there also the original receipt on the heading of Rowe & Mitchell Limited, I was giving you all of the clues for you to solve this, like when I watch Columbo on the television with David Lee, David Lee told me before he died when I was trying to-

SOOUTHWELL, JA: Mr. Murfitt I'm sorry, this- you either address the question of costs or this Court will have to proceed to make an appropriate order. You have not as yet addressed us on the subject of costs at all. This Court is not a forum for trying to re-argue questions about your entitlement to a lease or a sub-lease, which have been decided against you.

MR. MURFITT: No, I was asking for a stay of eviction, you told me, and the question you put to me, which I've been revising and researching, last night on the White Book, which I said it was the Supreme Court Act of 1981 which gave you jurisdiction, I have to find this on 5314-48 to 5314-51 to 53 on the procedures of the latest 1999 White Book, the old ones didn't tell me, I found it, but the Advocate surprised the Privy Council and I would like to make a statement that I have checked out, and I agree with you a million percent, sir, that Lord Rodger was a very eminent Scottish judge for that, sir-

SOUTHWELL, JA: Will you please address the question of costs Mr. Murfitt otherwise this Court is going to rise, as I have told you.

MR. MURFITT: Yes but I shouldn't have to pay costs against myself, the same as I cannot steal from myself, it's basic law. That I'm trying to argue-

BELOFF, JA: Well we have your point that you are a taxpayer and there is as it were circularity, that's the point we have in mind, but nothing else you say could conceivably bear on the issue of costs and these are-

MR. MURFITT: But if they have got- if they have got a compulsory purchase which is against Human Rights Law I am told even here, and they've got to buy a piece of land which I own, all of these flying in the face under 12(a) of the Law Officers where they said this was an office of Rowe & Mitchell before, this was de Vic Carey, the Bailiff himself, sir, and it is mentioned and highlighted in there, the same as I gave the assignment with all of the clues that if you had not been barking up the wrong tree from there and you would have said straightaway "That does not belong to the Channel Island Granite" because if you look at the written statement which is under 3, you can see that they couldn't possibly-

BELOFF, JA: Mr. Murfitt, you may or may not be able to interest the Court of Human Rights at Strasburg with these points but that-

MR. MURFITT: But I'm trying to interest you sir, I trying to find a way to-

BELOFF, JA: We have made an order-

MR. MURFITT: Because if I don't- I don't have to pay costs to myself.

SOUTHWELL, JA: Mr. Murfitt will you please now just- You have said what you have to say about costs?

MR. MURFITT: I was giving a similarity.

SOUTHWELL, JA: We have the point and now the time has come for you to cease talking to us and you can go to Strasburg and make what points you wish there, we now have to decide the question of costs?

MR. MURFITT: Can I please have one moment please, just one thing on this; I will be making to the Court of Alderney an application for my benefit in Rowe & Mitchell Limited for rectification of-

SOUTHWELL, JA: You may well be but that is for another Court on another day, not for us now on the issue of costs.

MR. MURFITT: No, but in the meantime if you will not only reverse the costs but reverse your decision, and allow me to stay there until I can make this decision because clearly if you could see-

SOUTHWELL, JA: We have already decided that against you Mr. Murfitt.

MR. MURFITT: You haven't decided sir, you haven't-

SOUTHWELL, JA: Yes we have decided that against you and we are-

MR. MURFITT: But you can always reconsider.

SOUTHWELL, JA: No there is no power in us either, we are now not only functus officio in the whole dispute between you and the States of Alderney we are also functus officio in relation to the termination of your present application. Will you please now sit down, Mr. McMahon, anything you want to say?

MR. MURFITT: Please sir can I speak, that must be changed in law-

BELOFF, JA: Will you please sit down Mr. Murfitt. Now Mr. McMahon the States may have their costs for this application.

ADVOCATE McMAHON: I'm grateful sir.

SOUTHWELL, JA: Thank you.

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I, Suzanne Margaret O'Neill hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill

Tuesday 18th November 2003