Fairhead et al v Praxis Holdings Ltd et al
Court of Appeal
15th June, 2015

JUDGMENT 28/2015

Application for leave to appeal the Order of the Royal Court (McMahon, Deputy Bailiff) dated 17 March 2015 re payment of security for costs to the Respondents.

Approved Text
15.06.2015

IN THE GUERNSEY COURT OF APPEAL

CIVIL DIVISION

(1) NIALL FAIRHEAD **("the Applicants")**
(2) DUBLIN LAND SECURITIES LIMITED

V

(1) PRAXIS HOLDINGS LTD **("the Respondents")**
(2) PRAXIS FUND SERVICES LTD
(3) PRAXIS WEALTH SOLUTIONS LTD
(4) DAVID BREUER-WEIL
(5) IAN DU FEU
(6) DR CLARE McANDREW
(7) MARY NEL BROWNING
(8) SEPHAR LIMITED
(9) DR SIMON JOHN THORNTON

APPLICATION FOR LEAVE TO APPEAL

Decision of a Single Judge

Sir Richard John Collas, Bailiff, President of the Court of Appeal

Advocate for the Applicants: Advocate N J Barnes

1. The Applicants have applied for leave to appeal the Order of the Royal Court (McMahon, Deputy Bailiff) dated 17 March 2015 wherein they were ordered to pay jointly the sum of £185,000 as security for the costs of the Fourth and Tenth Defendants (represented by Advocates Babbé and referred to as the "Babbé Defendants") and to pay jointly the sum of £165,000 as security for the costs of the First, Second, Third, Fifth, Sixth, Eighth and Eleventh Defendants (represented by Mourant Ozanne and referred to as the "Mourant Ozannes Defendants"). The Deputy Bailiff refused leave to appeal in a judgment dated 15th April 2015.

2. The Applicants seek to renew their application before the Court of Appeal and it has come before me as a single judge of the Court.

3. An unusual feature of the application for security for costs was that the First Applicant is a natural person resident in England and the Second Applicant is a company incorporated in the Republic of Ireland. There were strong grounds for making an order against the Second Applicant whereas the Deputy Bailiff would have refused to make an Order against the First Applicant if he were the sole Plaintiff in the proceedings.

4. The Deputy Bailiff found that the Second Applicant was balance sheet insolvent. For that reason and the fact that it is non-resident in Guernsey, he held that if the Second Applicant had been the sole claimant, he would have had no hesitation in ordering that it pay security for costs.

5. Whereas, if the First Applicant had brought the proceedings in isolation, it is unlikely that the Deputy Bailiff would have made an order that he pay security for costs. He correctly looked to Part 25 of the Civil Procedure Rules 1998 as guidance in the application of Rule 82 of The Royal Court Civil Rules, 2007. Under CPR 25.13(2), the only "gateway" condition applicable to the First Applicant was (a)(i) namely that he is resident out of the jurisdiction of the Royal Court. Non-residence is no longer considered, by itself, to justify an order for security for the full costs estimated to be recoverable by a successful party. The Royal Court applies the principle in Nasser v United Bank of Kuwait [2002] 1 WLR 1868 and normally limits any security to the additional costs of enforcing a judgment in a jurisdiction that permits enforcement of a Guernsey judgment. In the present case, the Deputy Bailiff said that he had no evidence as to any such increased costs of enforcement and consequently decided that had the First Applicant been looked at in isolation, he would not have been ordered to pay security for costs.

6. However, the Deputy Bailiff declined to make an order against the Second Applicant alone because of the risk that it might disappear from the proceedings leaving the First Applicant as the sole claimant. He said (in paragraph 49 of his judgment of 17 March) that such a decision would not be a "just outcome to all the parties".

7. In doing so, he was exercising the discretion conferred on him under the wide terms of Rule 82 of the RCCR. The circumstances in which an appellate court will interfere with the exercise of discretion by a first instance judge are rare and well established. For that reason, it is not immediately apparent to me that the appeal has any "realistic prospect of success", being the test to be applied as per a number of recent Court of Appeal decisions, including Carlyle Capital Corporation Ltd v Conway [2011-12] GLR562.

8. However, I have decided to refer the application for leave to appeal to the plenary court sitting in the week commencing 20 July 2015. The court presently has a full list of matters to be heard that week but it should have time available to hear the application for leave to appeal and, if granted, may be able to hear the substantive appeal. Counsel must attend prepared to deal with both.

9. I direct that any additional skeleton arguments or other material that counsel may wish to lay before the plenary court shall be lodged with the Registrar no later than 4pm on 29 June 2015.

Sir Richard Collas
15 June 2015

