



Romain Zaleski v GM Trustees Limited.
Court of Appeal
7th March, 2016

JUDGMENT
9/2016

Refusal of application for extension of time in which to appeal.

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION

ROMAIN ZALESKI

(“the Applicant”)

V

GM TRUSTEES LIMITED

(“the Respondent”)

**APPLICATION FOR LEAVE TO EXTEND THE TIME PERIOD FOR LODGING A
NOTICE OF APPEAL**

Decision of a Single Judge

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

Advocate for the Applicant: C. J. Hay
Advocate for the Respondent: N. Kapp

1. On 14 January 2016 the Applicant lodged an application for an order that the time period for serving a notice of appeal in relation to the judgment of the Royal Court handed down on 1 September 2015 be extended to expire two months after the determination of this application or the receipt by Collas Crill of Mourant Ozanne’s files relating to the Royal Court proceedings to which the judgment relates. The application was supported by an affidavit sworn by Francois A. Von Gunten, a member of the Geneva Bar who described himself as managing and co-ordinating the legal affairs of the Applicant across a number of jurisdictions. I also have a skeleton argument in support of the application settled by Advocate Hay of Collas Crill dated 18 February 2016 and a skeleton argument settled on behalf of the Respondent by Advocate N Kapp of Carey Olsen.
2. Both parties are agreed that the leading case in Guernsey in relation to the Court of Appeal’s power under Rule 17 (1) of the Court of Appeal (Civil Division) Rules, 1964 to extend the period within which a party may file a notice of appeal

is *Gaudion v Weardale Limited* (1997) 24 GLJ 83. I agree that is the leading judgment and sets out the test that I must apply in considering the application:

“In deciding whether to exercise its discretion to extend time for lodging the notice of appeal, the Court has to consider the following matters:-

- 1. Whether [the applicant has] a sufficiently arguable appeal against the [judgment of the lower court].*
- 2. Whether as a matter of discretion an extension of time should be granted. This in turn involved a consideration of –*
 - a. the explanation given by [the applicant] for their failure to lodge notice of appeal in due time and their subsequent delay in so doing;*
 - b. any prejudice to [the respondent] as a result of the late service of notice of appeal and the consequent delay in the hearing of the appeal; and*
 - c. any other relevant factors.”*
3. The reasons for the delay are that no-one in Mourant Ozannes had sufficient knowledge of the case to advise the Applicant in connection with any appeal following the handing down of the judgment. Prior to his tragic death earlier last year, Advocate St John Robilliard had acted for the Applicant in Royal Court proceedings, without support or assistance from any of his partners, associates or colleagues at Mourant Ozannes.
4. The Applicant subsequently dis-instructed Mourant Ozannes and was formally replaced on the record by Collas Crill on 4 December 2015. Collas Crill had no prior knowledge of the matter and have not to date been able to access the files held by Mourant Ozannes. Consequently, I am told that Collas Crill are unable to advise on the merits of the application.
5. The nub of the Applicant’s submission is that in such exceptional circumstances, namely the tragic death of the Advocate acting in the Royal Court proceedings and the inability of anyone else in his firm to advise, leave to extend the time period should be given without any consideration of the merits of the appeal. I am therefore asked to overlook the first limb of the *Gaudion* test and am asked not to consider whether there is a sufficiently arguable appeal.
6. In support, the Applicant cites CPR r.3.9 and the test for similar applications that now applies in England and Wales as considered in *R. (Hysja) v Secretary of State for the Home Department* 2014 EWCA Civ 1633 where inter alia it was stated that *“in most cases the merits of the substantive appeal would have little to do with whether it was appropriate to grant an extension of time”* and that *“in most cases the Court should decline to embark on an investigation and firmly discourage argument directed to them “*. In paragraph 46 of his judgment, Moore-Bick LJ said that if the grounds of appeal were very strong or very weak the merits have a significant part to play in the decision.

7. I do not accept the inference that the merits of the appeal are never relevant. It is clear from the judgment in R. (Hysja) that where the prospects of success of an appeal are very weak, an extension of time will not be granted.
8. Advocate Hay's further submission is that it would be in the interests of the administration of justice the application be granted. If the Application were rejected, the Applicant would be denied the opportunity to appeal the judgment as a result of a very unfortunate set of circumstances.
9. I cannot accept that last submission. If the appeal is without merit, it cannot be in the interests of the administration of justice to prolong these proceedings which, I am told, had already been ongoing for five years prior to the hearing in the Royal Court.
10. Thus, in my judgment, CPR rule 3.9 does not assist the Applicant. In any event, the test I am asked to apply is that set out in Gaudion. It follows that I have to give consideration to merits of an appeal.
11. I am not in a position to do so as Collas Crill state that they are unable to advise the Applicant on the merits. I therefore have no option but to dismiss the application before me.
12. I would however consider a further application if supported by a skeleton argument which sets out the grounds of appeal and assesses their merits. In deciding whether to grant any revised application, I would have to balance all the relevant circumstances. The tragic death of Advocate Robilliard is clearly a factor to which any court would be sympathetic. However, even his tragic death cannot justify excessive delay on the part of the Applicant. I note that Collas Crill have been instructed since at least the beginning of December. Any further application will have to contain a detailed explanation of the delay both prior to and subsequent to their instruction.
13. For the reasons I have given, the present application is dismissed.

Sir Richard Collas
07 March 2016